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## Legislative Assembly of Ontario

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## Official Report of Debates (Hansard)

Monday 11 February 1991

### Standing committee on administration of justice

Child and Family Support  
Statute Law Amendment Act, 1990

## Assemblée législative de l'Ontario

Première session, 35<sup>e</sup> législature

## Journal des débats (Hansard)

Le lundi 11 février 1991

### Comité permanent de l'administration de la justice

Loi de 1990 modifiant les lois  
relatives aux obligations  
alimentaires



Chair: Drummond White  
Clerk: Lisa Freedman

Président : Drummond White  
Greffier : Lisa Freedman

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday 11 February 1991

The committee met at 1308 in committee room 2.

### CHILD AND FAMILY SUPPORT STATUTE LAW AMENDMENT ACT, 1990

### LOI DE 1990 MODIFIANT LES LOIS RELATIVES AUX OBLIGATIONS ALIMENTAIRES

Consideration of Bill 17, An Act to amend the Law related to the Enforcement of Support and Custody Orders.

Reprise de l'étude du projet de loi 17, Loi portant modification des lois relatives à l'exécution d'ordonnances alimentaires et de garde d'enfants.

**The Chair:** I would like to call our meeting to order. The purpose of our meeting this afternoon is to start to look at Bill 17, An Act to amend the Law related to the Enforcement of Support and Custody Orders. We have with us the Attorney General, Howard Hampton, who will be speaking.

First off, if I could refer your attention to the gold agenda, this is the most updated agenda, which we will be following today and for the better part of the week, pending amendments to that agenda. I should also like to draw the committee's attention to the fact that after the initial presentation regarding Bill 17, the committee will be receiving the report of the subcommittee in regard to committee business.

So without further ado, if I could move on to Mr Hampton—

**Mr Elston:** Mr Chair, I just quickly did take a look at the yellow document which purports to be our agenda. While I note that there probably are some time problems, I would find it kind of disheartening if I happened to be, for instance, Margaret Buist from the London Status of Women Action Group and found that I was programmed in at 1045 and scheduled out at 1115, when she has obviously had a lot of work to do and she is travelling up here somehow from London. The guidelines for these things are really quite tight.

Cynthia Lucas starts at 10. She is replaced by Nancy Zinner at 10:15 and, while these items may be brought to your attention a little bit later on, you just cannot ask people to come into this place and speak here for 15 minutes and expect any kind of real presentation. I think perhaps we will talk about that later, but I wanted to get on the record early that there are people with things to say and it does not look like we are going to be really giving them any chance to say it. I just wanted to register my concern before the Attorney General began his remarks.

**The Chair:** Your concern is duly noted. I would certainly agree with you about the importance of the bill in front of us and the importance of thorough discussion. The way in which the time slots were given, I believe, was 15 minutes for an individual and half an hour for a group. In terms of extending the time limits, of course, that would

require many additional days to hear adequately from these groups, but that concern is noted. Thank you.

**Mr Elston:** This is a new government with a desire to consult like it has never been seen in Ontario to consult before, so I just bring it to your attention early on.

**The Chair:** Thank you, Mr Elston. Mr Hampton.

**Hon Mr Hampton:** Thank you, Mr Chair, members of the committee, committee staff, ladies and gentlemen. First of all, let me introduce the Ministry of the Attorney General staff who will be here to help us this afternoon. Natalie Pilcow, is counsel in the policy development division; Linda Feldman, is also counsel in the policy development division; and Ellen Mary Mills is the new director of the support and custody enforcement branch, which we hope will soon be no more, or at least it will no longer be known in that name.

**Mr Sorbara:** You are doing away with the ministry or is it just the branch that you are changing?

**Hon Mr Hampton:** I will deal with Mr Sorbara's initial question, hopefully, as we move through the afternoon.

**Mr Elston:** It is an auspicious beginning. Let's go.

**Hon Mr Hampton:** I am very pleased to be here today to discuss what I believe is fundamental legislative change for the province. This standing committee is about to consider significant changes to the way child and family support payments are enforced in our province. The massive social problem of support default is not unique to Ontario. For many years now Ontario, other Canadian provinces and a great many foreign jurisdictions have wrestled with the devastating consequences which result when people refuse to comply with child and family support orders.

I do not believe this is a partisan political issue. Previous Ontario government administrations have tried to address this problem through legislation. The problem is that we are still facing a 75% default rate among support payers and it is this government's intention to strengthen the current legislation through a major innovation which would see support payments automatically deducted from the income source as soon as a support order is made.

It is our objective that over time the payment of support from income source will be seen as the way support orders are honoured. These payments should be seen as a legal, social and moral responsibility. It will be convenient and it will reduce the time a support recipient must wait until moneys are flowing. More important, this new system will help to ensure that the children of this province do not suffer because of support default.

This program is about children and families and, frankly, it is about ensuring a decent standard of living for the women and children of this province. I want to make it clear from the very beginning that passage of this bill will



not totally eliminate child and family support default. It is, however, another tool, and a very important tool, in the fight against child poverty and this fight is a priority for the government of Ontario.

Social attitudes must change if we are to see a shift to a vastly improved support compliance rate. The failure to pay support must be seen as socially unacceptable. If this bill is passed, the Ministry of the Attorney General will launch a public awareness campaign to educate our community about the serious problems associated with support default. This campaign will be aimed at fostering an attitude that paying support is a moral, social and legal responsibility.

The existing support enforcement program has been in existence for three years. A rapidly increasing case load has resulted in a significant decrease in the level of service being provided to the public. The support and custody enforcement branch is mandated to enforce orders for support and custody and support provisions in domestic contracts. The branch consists of 260 staff in a head office and eight regional offices across the province. The current case load stands at 83,000 and is increasing at the rate of approximately 1,200 cases per month. It has been projected that this increase will continue for the next eight years, at which time it is expected to level off, but this will mean a total of about 136,000 cases filed with the program by 1998.

Research studies on the issue of support default are most revealing. An Alberta study showed that 80% of separated or divorced husbands have sufficient disposable income to meet their court-ordered obligations, but they do not. The consequences of these defaults are substantial. Without regular support payments, women and children are forced to live below the poverty line, relying on social assistance and food banks. When we consider the latest statistics, which indicate that one in five children in Ontario lives below the poverty line, this legislation seems all the more crucial.

This initiative will also allow the child and family support office to function more effectively. I think I just answered your question, Mr Sorbara. The timely collection of ongoing support payments would avoid the accumulation of support arrears, shift the emphasis of enforcement activity to more difficult cases where the payer is self-employed or difficult to locate, and increase the government's recovery of social assistance payments from support payers. The enforcement program now returns \$12 million per year to the Treasury in social assistance payment recoveries.

Australia has had support deduction legislation since 1988. The United States has passed legislation requiring support deduction for all support orders being enforced by a state child support agency. The United States legislation further requires that all support orders be subject to support deduction legislation by 1994.

The Ministry of the Attorney General has consulted with a number of community groups, as well as the bar and the judiciary. As a result of these consultations, we will be introducing a number of amendments. Most of the amendments are of a technical nature and are designed to clarify the intent and language of some of the clauses.

I appreciate the input we have received and I look forward to further comments from individuals and groups appearing before this committee. I know all members agree with me that the failure to pay child and family support is totally unacceptable. It hurts all of us but, most important, it hurts this province's greatest resource—its children.

I thank you very much and I want again to introduce Natalie Pilcow, who, if the committee wishes, will outline some of the major amendments that we have introduced today and the intent of those amendments.

**Mr Elston:** Does that mean we are supposed to go through these one by one, the 31 pages of amendments?

**Hon Mr Hampton:** No. I think you would agree, if you have had a chance to look at them even briefly—

**Mr Elston:** Well, we have not.

**Hon Mr Hampton:** —that some of the amendments are merely changes in wording. But there are four or five amendments that are of major importance and I think it only fair that Ms Pilcow have a chance to outline those so that everyone understands exactly what they mean and why they are there.

**The Chair:** I am sorry, is it the wish of the committee to go through those amendments, if only on a brief level? Agreed.

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**Ms Pilcow:** As the Attorney General has just said, the vast majority of those amendments really relate to clarification of the drafting, more so than changing any of the substance of the bill. They were drafted in response to a number of comments that we got from members of the public, who wrote and who called us and said that various sections did not read exactly in a way that they were able to understand. So we tried to the extent that we could to clarify any areas of misunderstanding that we were aware of.

There are three amendments which go somewhat beyond clarification of drafting, and I will highlight those three for you. One is a proposed amendment to change any reference to "debtor" to "payer," and that applies both to the bill and to the act, the entire act itself, and that is the first amendment that will appear in your package.

A second change relates to section 3d of the proposed act, the clause which provides for the posting of security. The bill provides that the court may suspend a support deduction order in two situations. One is where it would be unconscionable and the other is where the parties agree and security is posted. The amendment provides for security only in the form of cash and it also provides for a minimum amount of security and that amount is four months of support. In the original draft of the bill, security is not limited in terms of its form and it now is in the proposed amendment.

**Mr Elston:** So rich people will be able to buy their way out and poor people will not. Anybody who can afford four months' deposit is the one who will benefit from that, and the poor people will not be able to. Right?

**Ms Pilcow:** I am describing the amendment.



**Mr Elston:** I was just asking the question, but it is pretty obvious.

**Mr Sorbara:** He is describing the effect.

**Mr Elston:** I was just wondering if the Attorney General really is wanting to bring the amendment in in that form, in the sense that it really does make sure that the well-to-do people can buy their way out of this thing and poor people, who are not always able to put together four months of—

**Mr Fletcher:** On a point of order, Mr Chair: Are we going in some rotation here or is this just everyone jump in and ask questions?

**The Chair:** With the indulgence of the committee, there are several ways in which this can be handled. Ms Pilcow could go through all the amendments and then we could discuss them, or we could discuss them with each amendment. I would suggest—

**Mr Fletcher:** Mr Chair, if you would like a suggestion, I would suggest that we go through it and then we allot time for each party for questions.

**Mr Elston:** If you want to have questions later, that is fine, but I resent the idea that Mr Fletcher would suggest that you allocate time for each party, as though you are going to ration us somehow.

I just thought that was a very good question. A person who can afford to put four months of payments together at one time can buy his way out. I just wanted to bring that to the committee's attention.

**The Chair:** You have an excellent question, but the point of order refers to the way in which those questions should be put and at which time.

**Mr Elston:** And I just merely was describing why I jumped in. If you want us to have all our questions later, that is fine. I just do not want it to appear like I am agreeing that there will be a rationing of time as among the parties.

**Hon Mr Hampton:** I think the member has raised a very good question and I think it is a question that Ms Pilcow and other members of the ministry staff will be quite prepared to deal with as you go through the clause-by-clause discussions.

**Mr Elston:** Clause by clause?

**Interjection:** That is Friday.

**Mr Sorbara:** Maybe.

**Ms Pilcow:** The third significant proposal for change is a change to subsection 3c(8) of the bill, and that change is in the total amount which may be deducted for an ongoing payment and arrears. The change is that the total amount deducted will be 50% of the net amount owing to the debtor. Currently there is a double cap; it is 50% of the ongoing payment, up to a maximum 50%. That has been changed now to the same maximum which can be garnished. So it is now 50% of the net amount owing to the payer.

Those are essentially the amendments which do not relate to clarification of previous drafting and it may be

appropriate to go through the balance of them once members have had an opportunity to look at them.

What I propose to do now is to just go through some of the major elements of Bill 17. There are a number of changes suggested to the SCOE act by Bill 17. The most significant amendment is the introduction of a support deduction plan. There are a number of others and they include an improved writ system for the collection of support, a method by which a payer in default can be required to file a financial statement with the program and a mechanism for the resolution of disputes between the parties when a support order terminates. In addition to these amendments, there are a number of very technical amendments to the act, and those, I assume, you can go through during the clause-by-clause analysis.

The first provision that deals with the support deduction plan is proposed section 3a. What it provides is that every Ontario court that makes a support order will also make the support deduction order. It is intended that the support deduction plan will only apply where the court makes an order for periodic payments at regular intervals. One of the proposed technical amendments we will be suggesting is some language which will clarify that the support deduction plan will only apply where a periodic payment is ordered by the court.

The court will have the discretion to suspend that support deduction order in only two circumstances, and they are very limited. One is where it would be unconscionable to order support deduction, and the other is where the parties have agreed and where security has been posted. That is set out in section 3d of the bill.

The support deduction order will be a prescribed form, and it will be completed by the clerk or by the judge at the time the support order is made. The support deduction order will be filed in the court office immediately after being completed and will then be served on the director's office. The director of the program can then serve that order on the employer or other income source.

The court will be required to obtain particulars regarding the payer's employment or other income source at the time the support order is made, and that information will be completed as well by the court on the support deduction order to enable the program to serve the order immediately on the income source.

The support deduction order will bind not only the income source or the employer noted on the order but any subsequent employer or income source of the payer.

"Income source" is a defined term under the bill and it is defined in subsection 1(3). Support deduction will apply essentially to payments in the nature of wages or salary.

One of the amendments we are proposing is that we specify that the income source must pay to the payer on a regular and periodic basis. That does not currently appear in the definitions, but for clarification purposes we have added those in an amendment.

There are a number of other types of income in addition to wages or salary that are listed. They are: benefits under an accident or disability or sickness plan; a disability, retirement or other pension; an annuity; and commission income, provided that it is paid on a periodic and regular



basis and provided that the funds are not recoverable by the employer should the payer not earn a sufficient amount to earn the commission. It is only a guaranteed type of payment we are looking at to apply to support deduction.

Subsection 3c(6) sets out the power of the program to add arrears to the support deduction order. The total amount, as I had mentioned earlier—this is one of the amendments—that can be deducted is 50% of the net amount owing to the payer.

Subsection 3c(13) provides that if an income source fails to remit the appropriate amount without a good reason, the income source can be found responsible for the payment.

Subsection 3c(15) imposes an obligation on both the payer and on the income source to advise the director regarding any interruption in payments or termination of payments.

Subsection 3c(16) also obliges the director and the income source to advise of any resumption of payments to the payer, and the payer will be obliged to advise of any new employment.

Subsection 3c(17) is an obligation on the income source to keep all information obtained as a result of support deduction confidential. Contravention of this section constitutes a provincial offence, and that is set out at section 12b of the bill. If an employer is found to have contravened this section, there is a fine of up to \$10,000 which can be imposed.

Section 3e of the bill provides that the amount of the support which is being deducted on an ongoing basis cannot be varied unless the payer brings an application to the court to vary the original support order. The debtor can also bring under clause 3i(1)(c) a motion to reduce the amount of the arrears which has been added to the support deduction order on the grounds that he is unable to pay them. The amount of time during which the debtor has to pay those arrears can be lengthened, but the actual arrears cannot be rescinded on an application of that type unless the debtor brings the application to actually amend the support order.

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Section 3k of the bill sets out that the support deduction plan will apply to existing cases filed with the program and to domestic contracts in two situations. One is where the recipient requests this to happen, and the other is where the program feels that the best enforcement option for that particular case is support deduction. Where either of these two circumstances exists, the debtor will be given 30 days to bring a motion for suspension if the grounds for suspension exist. If the motion is not successful or if the debtor chooses not to bring that motion, support deduction will automatically apply in those cases.

Linda Feldman will briefly run through some of the other provisions of the bill.

**Ms Feldman:** Starting with section 3g of the proposed act, which is at page 18, it is rare to find a fixed termination date in most support orders. Support obligations often terminate when a child is no longer a child of the marriage within the meaning of the Divorce Act or when a certain

non-specific event is reached. So section 3g provides for notice to be given to the director when a terminating event has occurred or is alleged to have occurred. If the parties to the support order then agree that the obligation has ended, the director must stop enforcement with respect to that obligation. If the parties do not agree, a motion can be brought to the court for a determination. One of the amendments the government is proposing is to clarify that if the termination of the support obligation is in fact on a set calendar date, the director shall cease enforcement.

Section 3g of the proposed act also provides that the director's jurisdiction to enforce the support deduction order extends even to the situation where the support order to which it relates has been withdrawn from the director's office. Another of the clarification government amendments being proposed is that that particular subsection of section 3g become part of section 3c of the proposed act.

Section 3h of the proposed act clarifies that the director is not a party to any proceeding to determine the entitlement of any person to support.

The other sections you might note are the proposed section 3j of the act, which allows the director to request financial statements and proof of income from payers who are in default or in respect of whom a support deduction order is being enforced, without beginning a court proceeding.

There is also a duty to correct any wrong or incomplete information provided within 10 days of that information, or the fact that it is wrong or incomplete being noted by the payer.

Section 3l of the proposed act imposes a duty on the payer to advise the director with respect to any change of address within 10 days.

Section 4 of the bill—under the present act a person who was ever on an assignment with the Ministry of Community and Social Services had to have the minister's consent in order to withdraw their support order from the director's office. That section is proposed to be amended to require that that consent is only needed if in fact there are still arrears outstanding from a past assignment. So if a person has gone off an assignment with that ministry and there are no arrears owing to Comsoc, that person can withdraw without having the minister's consent.

Section 8 of the bill, which is the proposed section 10a of the act, deals with a new updating system with respect to writs filed with the sheriff's office with respect to a support order. The bill introduces a new system where the usual first writ is filed with the sheriff's office, but after that, statutory declarations can be filed from time to time specifying the current amount that is owing under the support order, and the writ is deemed to be amended to specify the amount appearing on the statutory declaration.

If the sheriff receives money or if there is a request made regarding the amount owed under a support writ from somebody who wants that writ removed from the sheriff's file, the sheriff has to notify the creditor or the director, if the order is in the director's office, of the chance to file an updated statutory declaration, so that the writ filed with the sheriff should remain updated with respect to the accruals under the support order from time to time.

You might also note the proposed section 12a of the act, where the courts can punish by fine or jail any wilful contempt or resistance to its process, rules or orders under Bill 17. The maximum fine is \$10,000 and/or jail of up to 90 days maximum.

Section 12b of the proposed act makes the contravention of specific duties that are noted, the provisions noted in that particular subsection, an offence subject to a fine of up to \$10,000. Again, the word "knowingly" is used. The duties include the requirement that the income source begin deducting payments at a certain time after being served with the notice; the requirement that an entity served with the support deduction notice give notice if they allege they are not an income source as defined by the act; the duty of both the income source and the debtor to give written notice of termination or interruption of payments; the duty on the income source and the debtor to notify a resumption of payments; a duty to keep information about a debtor confidential, as Natalie has noted; and the duty of a payer to deliver a financial statement within a certain period of time after the request has been made; and, finally, the payer's duty to notify of a change of address.

**Ms Pilcow:** Those, briefly, are the major amendments that are being proposed by Bill 17.

**Mr Sorbara:** I take it that we are going to follow customs that have characterized committees like this before, that I will have an opportunity to make some opening remarks about the bill and that the same opportunity will be accorded to my colleagues from the Progressive Conservative Party. I am not sure what happens with respect to the government party, but I do not mind if they want to make some comments as well. Then we will go into a question and answer session with the minister and his staff who are here. Is that correct, Mr Chairman?

**The Chair:** Feel free.

**Mr Sorbara:** I will begin my remarks by congratulating the minister on what is the first important legislation he has introduced into the Legislature and has now before this committee. It is also the committee's first opportunity to really get its collective and non-partisan teeth into a piece of legislation.

I was, I must confess, somewhat disappointed at the remarks of my legislative colleague the honourable the Attorney General, because there was some rhetoric within his remarks that I think was unnecessary and, in some respects, becomes deceptive and will not stand him in good stead once this bill is passed either in its current form or its amended form.

Just in passing, Mr Chairman, I should tell you that I had an opportunity a while back to read a document that came to my attention in these brown paper envelopes that are now starting to come our way. This is so refreshing. It makes opposition downright pleasant. It happened to be a communications strategy for the New Democratic Party, I guess both ministers and members. The gist of the document was: "Let's be honest and up front about what we're doing. If we make a mistake, let's say we made a mistake. If someone else deserves credit, let's give them credit as well. Let's not try and be pompous, like the former government

tried to be pompous and all its predecessors before them through 125 years of Ontario history."

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Unfortunately, I guess the Attorney General did not read that document. Had he read that document, he probably would have said in his remarks, "This project is a project that was initiated by the previous government" or under the direction of the previous Attorney General. Let's not even give too much credit there.

It arises, of course, out of the support and custody orders enforcement branch, which the Attorney General should have admitted is in one hell of a mess. We know that as MPPs, and my colleagues in the New Democratic Party, when they get their constituency offices organized and working, will know that as MPPs, because there will be lots and lots of calls from people who are owed support money who have not received it. In quiet and sometimes not so quiet desperation, they will call your offices and say: "Would you please help me? I have not got my payment this month and I cannot feed myself and I cannot feed my children."

The branch is in a terrible mess. It is not able to do the job it is legislatively required to do. It has taken certain steps as a result of the problems it confronts: It has done some research and it has found that other jurisdictions confronted with the very same problems in the very same sort of branch have taken some rather severe steps. They have created a statutory right to automatically garnishee or attach the wages of the payer or the individual, generally the husband, who owes support.

On that score, I want to publicly thank Susan Swift, who is the research officer of the committee, who prepared a very good document analysing what other jurisdictions do. The minister mentioned Australia. There are several US jurisdictions now, including Wisconsin notably, which have adopted this rather intrusive measure—the state automatically attaching wages is an intrusive measure—and there has been some success. I want to repeat that. There has been some success. Not the elimination of child poverty, I say to my friend the Attorney General, not a dramatic increase in the number of support orders that are honoured completely, but some improvement. What was proposed, certainly in cabinet, by the previous Attorney General and what is now being proposed by the incumbent Attorney General is that Ontario as well adopt this strong medicine to deal with a serious problem.

The heart and soul of the bill is the right or the obligation of a court hearing a matrimonial matter to write and register an order for the automatic deduction from wages of the debtor spouse; as I said, generally the husband. All these other things are nice little fix-it types of measures, but that is really what we are talking about. The members of the minister's policy unit have referred to the few exceptions that exist for this kind of automatic deduction order.

It is interesting that we are beginning our hearings on this matter on the very day the Treasurer of Ontario has held a press conference to announce what his transfer payments will be to municipalities, to hospitals, to school boards, to universities and to colleges. I think some of us



had an opportunity to listen to the Treasurer's speech. Most of his speech was about how bad things were out there and how low these transfer payments are going to be.

He said: "We're not even going to begin to try and meet our firm commitment to support school boards to the tune of 60% of their operating expenses. No, we're not even going to start to do that. The economy is too bad. The municipalities are going to be really angry, because we're only giving them five point something per cent," even though they are saying they are being crushed under the weight of welfare orders. He said the universities are only going to be able to hold their own, colleges are only going to be able to hold their own, because the province is in such a recession that we cannot do it.

He did not say that the government is going to be coming up with some plans to deal with the recession. He reiterated that it is all Brian Mulroney's fault, that it all has to do with high interest payments. He did not even suggest that maybe we will recall Parliament and begin to deal with that question. None of that, just that we are in a hell of a mess.

Last Friday, we heard the Treasurer actually predict that Ontario would lose its triple A credit rating because his deficit was going to be so high. But what does that mean in real terms? In real terms that means that this proposal we are looking at, at least for right now, is not going to have much effect because if you do not have a job, if you do not have an income, there is nothing from which to deduct.

This is all very nice and the Attorney General is going to be able to make a number of speeches about his first major success in his tenure as the Attorney General of the province of Ontario. I know that he is going to do that because his political staff in his ministry are going to encourage him to do that and he is not going to be able to resist.

But the fact is that if you lose your job, notwithstanding that there is an automatic deduction order out there against which you could have your salary automatically attached, there is nothing there. That is the real problem that we face in the province of Ontario.

We do have problems in this branch over here. As I think my friend Mr Elston mentioned at our little meeting on Friday, people phone up the branch and it takes them three hours to get through, then they are put on hold for 45 minutes or half an hour or so. Once they get through, there is not much the branch can do about it.

This is a very sensitive issue. We know as committee members it is a sensitive issue because there were a massive number of submissions made by the general public to the committee. I did not have anything to do on Saturday afternoon so I read through all of these submissions and I encourage those one or two members of the committee who have not read through them all yet to do so. If you do that, it really gives you a sense of what we are dealing with here, people coming from both sides of the issue.

What are those two sides? On the one hand, there is the perspective of the parent who has custody of children and who is the beneficiary or the creditor under the terms of an order for support and who is not receiving the money that

she is supposed to receive. This creates havoc in the lives of those women and, let's face it, it is predominantly women. Maybe there are one or two men out there. There is one letter from a man who was supposed to get support from his female spouse and that never came through. But if you read these letters, you really get a sense of the agony and the pain out there.

Of course, sometimes when the wages are attached—let's be frank, the wages could be attached now, garnish orders could be put into place automatically now, it does not take much, you just do that—you get the same result as we are getting here with this bill: the debtor, the payer, quits his job. He is so angry about what has happened in the marriage that he quits the job. "I prefer not to work rather than have my wages attached," he says. He leaves the province, leaves the country. So this is not going to solve all those problems. But if you go through the letters, you will get the sense of how this touches people.

The other side of the issue is from the perspective of the person who has to pay and who is now looking at having his wages automatically attached. There are a number of letters here from individuals who say:

"I am honest. I am law-abiding. I know my obligations. I meet those obligations. I do not want the state to administer this for me. I am outraged that now my employer's payroll system must be brought into this. For God's sake, leave me alone. I will honour my obligations. Go after the individual who is not paying. I support that. But I have a right to my privacy and I have a right to fulfil my obligations as best I can under the order that is made against me. I do not need your help, thank you very much. Besides, you need not spend my tax dollars collecting that money because you should only be spending taxpayers' dollars where that money is not collectable or not being paid."

**1350**

If I could, Mr Chairman, with your indulgence, just quote from a couple of these letters, the first one is from Donna MacDonald, who lives in Espanola, Ontario. She says she supports Bill 17, by the way. She says:

"This letter is to inform you that I am in favour of Bill 17 becoming law.

"I realize you will be receiving many letters concerning this and I am hoping you will take a few minutes to continue reading my letter. I will make my story as brief as possible and please take this as my consent that it may be openly read before the committee on 11 February." I thought I would grant her her wishes, although I am not going to read it all.

"My husband and I were high school sweethearts. We lived in a common-law relationship for seven and a half years. During those years, we had discussed marriage and children many times. We both felt that there was no need for marriage until we wanted children. Neither of us had much education. I had finished my grade 12, my husband had completed grade 11. Needless to say, we didn't have much to offer prospective employers. Therefore, we could not earn the income necessary to raise a child in the manner that we had wanted to. So in that case we practised birth control.

"Well, my husband returned to school to upgrade his skills, to become a stationary engineer, which was coming

along quite nicely, so we had started to talk more seriously about children. We had agreed we would start a family but we would get married first. So we got married. At the same time, I was reinstated as a status Indian so school was now an opportunity for me as well. We had agreed I would continue working full-time and go to school part-time evenings. I enrolled at the Toronto School of Business in their medical secretary course. I wanted a more solid education behind me which I could fall back on when a child became involved in our lives. So we put off having a child for a year while I attended classes."

Donna goes on to say that her husband got a job and she was doing okay. They got married and she became pregnant and, as she says, "We started to plan our baby's arrival which will be around 7 February." This was the very day I was reading this letter and I thought, "God, I'd love to call her and see how she is doing and whether or not she had her baby."

Then she says her husband simply could not tolerate the idea of becoming a father and he left when she was four and a half or five months pregnant. She does not know where he is. There is no contact. She is about to have a baby. She thinks he is making money and she says:

"My husband has all these choices to make whereas myself and my child have none. So far, I've become a burden to my family but this child is not my family's responsibility. The responsibility belongs to myself and my husband. I am willing to take my share. Is he? Obviously not."

"Thank you for taking the time to read my letter. I realize there may be gaps, but it is the same old song and dance."

"PS. I plan to return to school so that I can make a living for myself and my child on one income as the only person I can depend on is myself."

"I also plan to make my husband's life miserable as often as I can. If he pays the support, I will leave him alone. If he does not pay the support, I have nothing to lose."

"Bill 17—I vote yes."

**Mrs Cunningham:** Mr Chairman, could you advise me—I am sorry, I came in late—what the process is this afternoon? Because I have a number of questions around the minister's statement and I have read that letter.

**The Chair:** I appreciate that. Mr Sorbara was making opening comments on behalf of his caucus. What you are concerned about is the amount of time that will be left over.

**Mrs Cunningham:** I do not know how long the minister is here, but I certainly do not want him taking off before—

**Mr Sorbara:** He will be here all day, I think.

**Mrs Cunningham:** What is all day? How late are we sitting today, and how much time are you planning on us using in comments and questions? Mine will not take that long.

**The Chair:** I certainly appreciate that the issue really is how much time is available to us and how best that time can be used. We also have, of course, as I mentioned, the report of the subcommittee as soon as the minister and his staff have left and those questions have been finished.

**Mrs Cunningham:** I do not think my colleague has said anything about what we expect out of this meeting. First of all, we expect some discussion around the committee

process, because all of us have had a chance to read a lot of material, and it appears that the schedule is much heavier than what I thought it would be when we first got into it.

I am concerned about our work for Friday, so I want to have a talk about that with all of us present. I would like the minister to be part of that discussion, because I am sure he wants the best information he can get, not only to do with this bill, because there is a lot more that has come to us, but also other remedies that we can look at that will affect his ministry. I would like some discussion around that. I also would like an opportunity to talk to him about his statement this afternoon. I was hoping we could talk some process here so that we spend our time wisely this week. It is a much bigger job, I think, than what I thought I would be facing when I first came here today.

**Mr Fletcher:** On that point, I think I did make a suggestion earlier that the Chair allot each party a certain amount of time. I was thinking perhaps 20 minutes. I do not know what time the minister is leaving. Perhaps we could start from there, and find out when the minister is leaving and find out how much time we have, then divide the time up evenly between the parties.

**The Chair:** Okay, that is a slightly different means of doing that. Mr Sorbara, had you any idea how much longer you would have to speak?

**Mr Sorbara:** I can wind up my comments in about six and a half minutes. We could talk about process then or whatever.

**The Chair:** You have spoken for more than 20 minutes to this point. To encompass the concerns of the several caucuses here, if you could confine yourself to a few minutes, it would certainly be appreciated by the other members.

**Mr Fletcher:** Mr Chair, just one point. Can you allot some time? Do we know when the minister is leaving? Do we know how much time we have? If we knew that, I think we could allot so much time per party.

**Mr Elston:** That is not usually done.

**Mr Fletcher:** It does not matter if it is usually done or not usually done. Let's get some time here so that everyone has an equal opportunity.

**Mrs Cunningham:** Actually, I hate to disagree with the former minister, but it has been the practice after a minister's comments—and I know because I have been sitting on a lot of committees—for statements, for some sharing of the time, though.

**The Chair:** Okay. The suggestion has been, from Mrs Cunningham and Mr Fletcher, that there be an equal sharing of time. The minister informs me that he will be here or can be here until half past three of the clock. Would an equal division of time among the caucuses be agreeable?

**Mr Fletcher:** Yes, Mr Chair, that sounds good.

**The Chair:** It seems to be by consensus.

**Mr Elston:** I am not consenting to a rationing of time, no.

**Mr Sorbara:** Just to try and solve this, Mr Chairman. I can appreciate that the minister is very busy and must attend to other matters. I presume that the committee is



sitting till 6 o'clock today. Is that correct? Perhaps the minister's policy advisers and the director of the program can stay here to answer detailed questions. I have a few more comments to make. I know that my friend Mrs Cunningham probably has some comments to make, or Mr Carr. Let's get on with it, rather than arguing these points of order.

**The Chair:** Indeed, Mr Sorbara, that was the point. Mrs Cunningham.

**Mr Sorbara:** I did not interrupt—

**The Chair:** Excuse me. Mrs Cunningham.

**Mrs Cunningham:** I just wanted to know how long the minister was going to be here. If he is going to be here for another hour and a half, that gives us some time. On the other hand, I think we all have questions, so it would be fair to give each party not 20 minutes and cut it off, but a reasonable, fair time to ask our questions. But I will remind Mr Sorbara that in fact it has been the practice at these initial meetings that we share the time as far as possible, and the reason he might not remember is because he did not have to sit on committees like I did in the last few years.

**Mr Sorbara:** I want to tell my friend the member for London North—

**The Chair:** Mr Sorbara, could we return to the earlier question? Is it possible for you to finish your statement, please?

**Mr Sorbara:** It is possible for me to wind up my comments in a reasonable time, and in doing so, I will remind my friend from London North that—I am getting back to my comments now, Mr Chairman—

1400

**The Chair:** Could you please direct those comments at me, sir.

**Mr Sorbara:** Yes, I will—that I brought a number of bills before committees like this, and I made opening comments and then listened sometimes, in the case of the now Minister of Labour, to remarks that went on for days.

**Mrs Cunningham:** I did not sit on those committees, though.

**Mr Sorbara:** I know you did not, but this is a public process. We have something to say about this bill.

**The Chair:** Could you return to what you have to say about this bill, please? Thank you.

**Mr Sorbara:** I think the minister should stay here for far longer than he is planning on.

**The Chair:** I am sure he would love to.

**Mr Sorbara:** In any event, the only other letter that I want to refer to is a very short letter, Mr Chairman, and I am not going to quote from all of it. But the writer says re Bill 17: "I have seriously pondered its contents and have—"

Interjection.

**Mr Elston:** You had better not correct the Chair. You will cause problems.

**Mr Fletcher:** I am not correcting anyone. I just asked.

**Mr Elston:** You were.

**The Chair:** Mr Elston, please. You are interrupting your colleague's time.

**Mr Elston:** Mr Fletcher was giving you instructions.

**The Chair:** I did not hear them, sir.

**Mr Fletcher:** I was asking a question.

**Mr Sorbara:** In any event, this writer says:

"I have seriously pondered its contents and have concluded that I must protest most strongly what this bill proposes. There are many reasons for my strongest possible protest, among which are: this is one more encroachment of government on what is my business; it proposes once again to make the innocent pay the price for the guilty.

"For your and your government's information (and I have voted NDP since I was old enough to vote, a fact well known locally)"—this writer is from Welland-Thorold—"I pay child support and I did so for several months before the court laid it on me, and I have no intention of 'welshing.' I know that I may represent about 15% of 'loyals,' but I refuse to be penalized for the 85% or so that for one reason or another are guilty...that is a matter for the constabulary!

"Do you understand? You must not put through this bill. It is bad for those of us who are honest, and in the long run will be bad for the NDP." He is making a political comment. "Please communicate this letter's contents to all concerned."

The long and the short of it is that our party was prepared to move down this road. It seems now that the government of the day is prepared to move down this road. I have no idea what the Tories will do. They will do probably whatever is convenient. I think, though, under those circumstances, there is a possibility that this committee can actually do some real work on the bill, that instead of just digging ourselves into our positions—that is, the members opposite saying, "Yes, we support Mr Hampton's bill 100%"—we can try to work on finding the words that will allow us to do what we really want to do.

What we really want to do is to have an automatic deduction order in place in every one of the cases where, were it not for that order, the payments would not be made, and we want to have no automatic deduction order in place when it is clear that the payments would in any event be made. In other words, we want a solution only for those cases where a solution is necessary, and no solution where no solution is necessary. That would be fine-tuning this project in a way that I think other jurisdictions would want to emulate. Administratively we would be using the resources of government in the best possible way.

I want to conclude my comments on the question of resources. The folks over here, and the director in particular, who have to administer this program are going to take on a new workload of some very great significance. I want to say to the Attorney General while he is still here—it is not 3:30 yet—that unless he is able to squeeze out of the Treasurer resources far in excess of what exist now for this branch, he is going to find that he has the very same problem one year after this bill is passed that he has now, and that is an administration that is burdened with a workload it does not have the resources to properly discharge.

So I say to the committee members and to the Attorney General that we should direct our attention and our concern to the question of appropriately funding this branch. I know we are not in estimates and I know this is not a pre-budget hearing, but this bill is not worth the powder to blow it to hell, to quote a former critic of mine, unless the ministry and the branch have enough money to make it work.

If the Attorney General cannot give us that undertaking, then I have grave concerns not for the legislation, which will pass because we know who has the majority, but for the spouses who look to this bill as an opportunity to solve the terrible problems they have had thus far in collecting support.

Mr Chairman, my colleague Mr Elston will have some questions on the question of resources and the current state of the branch and how far it is backlogged and what resources it has and how it proposes to handle this additional workload, but for now these are my comments. Thank you for being so attentive and for allowing so few interruptions.

**Mrs Cunningham:** I am sitting in on this committee, Mr Chairman, in the absence of our justice critic, Mr Harnick, who is with the committee that is looking at constitutional reform, so I would just say it is a pleasure to be here. The subject is not new to me. I have sat in on other legislation pertaining to custody and access and enforcement and have spent a great deal of my adult life working in this area, so I think I bring a bit of expertise to a problem that all of us are very much concerned about.

To the minister, it is a pleasure to see you there, sir, and to know—

**Hon Mr Hampton:** It is nice to see you again.

**Mr Sorbara:** Just rub it in, Dianne.

**Mrs Cunningham:** Well, come on. Do not be so sensitive, Gregory. You used to be such a nice guy when you were a minister. Look at this—

**Mr Sorbara:** I am still.

**The Chair:** Mr Sorbara, please. Mrs Cunningham does have the floor.

**Mrs Cunningham:** He is so uptight. I wrote down the words that he used. He should relax.

**Mr Sorbara:** Yes, yes. Look at this.

**Mrs Cunningham:** "Whatever is convenient, the Tories." I should tell you, Mr Chairman, that we are here to do whatever is best for children and families, and I am not even sure what that is going to be with this legislation except to say that my colleague has put a lot of work into it and has already prepared amendments, some of which may be dealt with by the government today. I have not had time to look at it.

But I am, first of all, concerned about the process. It seems to me that—and you might want to consider this, all members of the committee—we have been entrusted with a tremendous amount of information, most of which we have not been able to read because it is not here yet, and when I take a look at the quality of the witnesses who are coming before this committee perhaps at some time during the week, I would urge you, Mr Chairman, to take a look

at our process. I think there is more to this bill than simple amendments to make it better. I am not even certain if we can do that by Friday because I have not heard everything that is being presented. And, Mr Minister, I hope you will respond to what I am saying here.

The other issue for us—and again the minister was very much a part of the discussions around supervised access and the need for programs—I think the letters I have read so far talk about certainly a need to get the payments—to enforce the payments that should be coming to mums and sometimes dads, but they also talk about the need for fathers to have access to their children. And if there is some way we can assist, not specifically through legislation but perhaps in making recommendations at the end of these hearings, I think it would be very helpful, because we do not have the opportunity in this process at Queen's Park sometimes to give recommendations to the minister, and I would like him to comment on that.

We just simply do not get the expertise we need before committees of this Legislative Assembly as frequently as what we need, and we have a great opportunity here to ask other questions. Therefore the 15 minutes—and, Mr Chairman, I really respect the problem you have in getting people before the committee—is a real concern to me, given the level of expertise that has volunteered to present itself, so you will see us asking questions about other issues that may be of assistance to the minister down the road.

1410

I would like to take a moment right now to ask the minister if he has considered one of his statements on page 2 and the kind of work that may have gone in or the advice that he may have had. The problem is that we are still facing a 75% default rate among support payers, and I have two questions. First of all, could you provide the committee, from your point of view, what a profile of a delinquent support payer might be? I would think there may not be one but there may be a trend in one direction or another. Second, are you aware of what the default rate was before the Support and Custody Orders Enforcement Act of 1985? Those two specific questions.

**Hon Mr Hampton:** Let me respond directly to the two issues Mrs Cunningham has raised. But before that, let me say it is nice to see that though some of the personalities have changed on the justice committee, it still behaves in very much the same old way.

**Mr Elston:** I was reading some of your old comments.

**Hon Mr Hampton:** They might prove helpful in the future. I am glad to offer them to you. If I am not mistaken, when I was on this committee, Mr Kormos sat in that chair and I sat in that chair, and I might say the personalities are quite the same.

**Mr Sorbara:** The campaign is over.

**Hon Mr Hampton:** I do not believe we can provide you with a profile. We will do our best to get some statistics for you. Second, we may be able to get figures back from 1985, which were pre-SCOE figures. We may not be able to get them for you until later on this week but we will do our very best to get that. Okay?



In responding to the other issue you raised about supervised access, I understand that you do have some process time later on this afternoon, and allow me to say that I would be very interested in any recommendations or advice the committee has on supervised access. I would very much appreciate whatever help you can offer in that area. I am certainly aware of how great a problem access is in terms of custody cases. In particular, you and I sat through this once before and I think we remember some of the submissions, so I would be very interested in whatever the committee has to offer.

Allow me just to respond to Mr Sorbara and his comments. I am sorry if I did not bring this out in my comments, but I did say that governments, not only here in Ontario but across Canada, the United States and elsewhere in the world have wrestled with this problem of support payments. I certainly recognize that the government that you were part of did wrestle with this problem and I appreciate the work that has been done in the past. I meant to signify that in saying that governments have wrestled with the problem.

I also appreciate that merely having support deduction is not going to turn the world right side up in this area; the problem is far more serious than that. But as I tried to say in my initial comments, this is a very important tool because what it will allow us to do is this—and again, Mr Sorbara, I want to speak directly to your queries. At the present time much of the support and custody orders staff time is taken up with garnishments and enforcement procedures that we believe will be done away with in large measure by support deduction. In other words, we spend time now doing enforcement work where that enforcement work would very likely not be necessary if we had support deduction at this time. We think we can then take the staff time that is now spent chasing around after people who are employed and who do have an income, we think we can in the future take that staff time and apply it to the really difficult cases. By the really difficult cases I mean, for example, someone who is only employed half of the year, construction worker or other types of seasonal work, someone who is self-employed or someone who does change jobs frequently. This is an important tool in the sense that it will allow us to reach incomes that are readily available, easily, effectively and efficiently and it will allow us to use our staff time in the most appropriate way to go after the most difficult enforcement cases.

Mr Sorbara indicated that there is a very large backlog. We know that and I know the former government knew that. We have already allocated an additional \$2 million that is aimed specifically at hiring more staff to deal with the backlog that is there even as we speak about this legislation. And there is a further allocation of over \$3 million which will come into place when this act is proclaimed, and I am assuming it will be proclaimed.

So we appreciate the need for more resources. We are supplying the additional resources but we also hope that by having support deduction we will then be able to use those resources now and in the future in a more effective and efficient way to go after the support orders that have traditionally been the most difficult to enforce.

But let me get to the heart of this again. When all of the statistics are looked at and when you look at the default rate and how many children are living in poverty, there remains a philosophical problem out there, an attitudinal problem. And the attitudinal problem is this: For too many people who have been ordered to pay support, the attitude is still there that paying support is somehow discretionary. What we are trying to do here, in the longer term, is to turn around that attitude. If I may make a comparison, it is a comparison with the drinking-and-driving campaigns.

Some of you were probably in university about the same time I was in university, and if I may say, when I was in university—

**Mr Elston:** None of us were in that long ago.

**Hon Mr Hampton:** —and I assume it was even worse way back when Mr Elston was in university—there were many situations where people thought it was acceptable to drink and drive. In fact it was sometimes socially popular to drink and drive. Now what we have done—and it started when Mrs Cunningham's party was the government and it continued when the Liberal Party was the government and we intend to continue it even as we speak—what happened is we turned around that social attitude and it became socially inappropriate to drink and drive, and it is becoming, I would argue, more and more socially inappropriate to drink and drive.

That is what we want to do here. Part of this legislation, the long-term scheme, is to have a system whereby it becomes the socially appropriate thing to do to pay support orders, and it becomes the socially acceptable thing, the social norm, that where a child or family support order is registered with a court, payroll deduction swings into action.

Payroll deduction will no longer be regarded as some sort of extreme measure. It will not be the exceptional measure; it will be the social norm and that is the long-term goal. I appreciate what Mr Sorbara has said. This cannot be done overnight. We may indeed have to come back to the Legislature a year from now and fine-tune the legislation, but we think it is a very worthy goal. We think it is a goal that will work in the longer term and, I might note, it is a goal that is being attempted not only here but in the United States and in Australia and, who knows, before long perhaps in other Canadian jurisdictions as well.

I hope I have addressed the questions and the issues that each of you raised in your opening statements.

1420

**Mrs Cunningham:** Well, if I could just continue on, thank you, Mr. Minister. The reason I asked the question about the profile, and I am not expecting any detail here, was with regard to one of your own statements, I think, towards the end where you talked about Alberta on page 7. Alberta studies show that 80% of separated and divorced husbands have sufficient disposable income to meet their court-ordered obligations. I am just wondering what our number would look like. That is what I mean when I am talking about the profile.

The other one is, I think if you look back pre-1985, you will see that the recovery was probably somewhere around

50%. Otherwise, we did better before the legislation of 1985, although even that was not good enough and of course that is why we enacted it. So in taking a look at the research, at the research staff, did I throw that number out? I could be corrected, but given my mind and the things I did before then, I think I am probably right on that, it is almost 50%. I am only trying to say that the jury is still out on whether this will work or will not work.

The research staff—Susan Swift has said exactly that in her summary, that it is basically new, so I think anything we do is going to have to be done very carefully and we are going to have to track it like we have never tracked anything before, because what we do not want are people disappearing from our province or our country or people hiding payments, those kinds of things that in fact are being reported in some way or another now, and I think you said that. I think you reassured us about that.

I would like your comment on my concern about the time frame. You have sat on committees like this where we have had to stay up all night on a Thursday night around important legislation bringing forth other amendments or what not. This does not allow us a lot of time to do a good job. We will be better able to think about that maybe on Wednesday, but I am hoping you are not shutting the door around a time frame because of something that the committee structure is all about, if in fact we find we need more time. I do not know what the rules are in this committee on that, but I would like to hear about them and I would like to hear your thoughts.

**Mr Sorbara:** The minister does not set the rules. The committee sets the rules.

**Mrs Cunningham:** Well, maybe things are different, but I have sat on committees here. No matter how important the legislation has been, no matter what, a committee sets an agenda three months before it sits and, by God, you have to stay with it. Now I am saying I am not prepared to be part of that system any more. I do not think committees worked in the past and if we feel as a committee that we want to change the rules for getting the work done halfway through the hearings because we are all stressed, I would like the minister to reassure us that it may be possible. I am sorry, Mr Chairman. You could probably do that.

**The Chair:** Yes, if I could, thank you. As you know, all committees submit their requests through the House leaders and there is an agreement. We have three weeks to sit to discuss Bill 17, the conflict of interest guidelines and a standing order 123 motion from your party. In the event that we decide as a committee to extend hearings in regard to Bill 17, that would take precedence over your standing order request and it might be something you might wish to discuss with your own colleague on the subcommittee.

**Mrs Cunningham:** Of course I will. You are saying then that there is some flexibility. Mr Elston and I sit on the committee that makes up the rules, and the government has the final say. So the members are sitting on the committee and all I am saying is we want to relook at that. Then if this committee asks, that is a possibility. That is all I want to hear.

**The Chair:** Yes, we could certainly look at the allotment of time within that three-week period. In fact, hearings could extend, you know, into the end of March if our committee so wishes.

**Mrs Cunningham:** Actually, I am not even as concerned about the hearings as I am about our fair deliberations around some of the amendments. That is what I am more concerned about. And this thing about we will do it during standing order 123, quite frankly, I do not want any big sticks any more. I have listened to that long enough too. I want to get the work done. I figure I am sitting here for the next four years.

**Mr Elston:** You are so negative.

**Mrs Cunningham:** I am not negative, I am positive and I want to see something done in a different way from what I experienced in the past and I think the people of Ontario do too.

**The Chair:** Could we defer this discussion until after the minister has left?

**Mrs Cunningham:** No. I would like his comments before he leaves.

**The Chair:** He certainly is welcome to comment if he so wishes.

**Hon Mr Hampton:** To Mrs Cunningham, something that may help you. One of the things the ministry did before introducing the legislation last fall and has continued to do since then is talk to a number of groups and organizations. Going down the list, I think you will find that many of the groups and organizations that will appear before you over the next couple of days have already had extensive consultation with ministry staff on the legislation and in fact suggested many of the amendments that are appearing before you now; they may want to offer some explanation or some description as to why they requested those amendments. In the next two or three days, when you speak to groups from the public, I think you will find they are quite well informed and perhaps, in some cases, know the proposed legislation inside and out. I hope that is helpful to you.

I will do what I can, and ministry staff will do what they can, to make the amendments understandable, meaningful and to promote full discussion. Again, I cannot tell the committee what to do in terms of time limits. You have set those time limits. I will try to help you as much as I can and ministry staff will try to help as much they can to use the time as efficiently as possible.

**Mrs Cunningham:** But you are not saying no if we request further time?

**Hon Mr Hampton:** I am not saying no.

**The Chair:** Mrs Murdock?

**Ms S. Murdock:** Mr Chair, just a correction: it is Miss.

**The Chair:** Ms?

**Ms S. Murdock:** It is not Mrs, that is for sure, in any case. I had not planned on speaking to the bill at all, but listening to my colleagues I think it is important. As a former constituency assistant for both unemployment insurance and



Shelley Martel, I had many occasions to deal in the constituency office with SCOE cases. I am sort of a guest here this week so I have not been privy to a lot of the conversations that have taken place on this, but I was sort of surprised that the Ombudsman was not on this list, mainly because through Shelley's office we had asked the Office of the Ombudsman to investigate the whole process of SCOE, and it took about six months before it did it. I was wondering, from the ministry staff, whether those Ombudsman proposals had been looked at and considered in the proposals to Bill 17.

**Hon Mr Hampton:** I am advised that no advice was received from the Ombudsman's office in the drafting of this legislation.

**Mrs Cunningham:** That was a great question.

**Ms S. Murdock:** I was thinking it may be a very good idea to have the Ombudsman present at some point to discuss it, for the simple reason that I know I was involved with many questions asked on that very subject, specifically of the things that were wrong with SCOE. That might be a backwards way of looking at Bill 17, but I think it is possible.

It is nice to hear from my colleagues that nobody disagrees with the idea of Bill 17. I just have a couple of questions. While I have you here, Minister, I will ask them of you.

Mr Sorbara's concerns have been with regard to tarring everyone with the same brush. I know we discussed that when it was in debate and so on. I was wondering if the legislation specifically dealt—hypothetically here—with only defaulted payers. Has the ministry considered the process in which that could be done, or is it just easier to do for everybody? Is that what the thought was? Was it only all payers you considered? Do you know what I mean?

**Hon Mr Hampton:** In fact, we considered who to include and why to include them very carefully. Again, I go back to the general concept we want to promote and want to see in place in Ontario: we want to arrive at a situation where the payment of support is seen, by and large, to be a social, moral and legal obligation. We believe the most effective way to get there at this time is to proceed by way of support deduction so that support deduction from the payroll cheque will be seen as the social norm for paying support in Ontario. For that reason it will not distinguish between individuals who have defaulted and individuals who are up to date in their payments in the future.

In the future, when a support deduction order is made in the family courts of Ontario, a support deduction mechanism will be automatic, with two exceptions. One exception is where the judge sitting on the hearing decides that a support deduction order would be unconscionable in the circumstances; there is case law under the Family Law Act as to exactly what "unconscionable" means. The second would be where both parties, the payer and the recipient, agree they want to opt out and security is paid. Other than that, the system will proceed by way of support deduction.

Again, I want to emphasize that the goal is to see the payment of child and family support as the social norm in Ontario, and we see payroll deduction as perhaps the very best way to do that.

1430

**Ms S. Murdock:** I agree with support deduction, particularly in that it will, hopefully, stop all the delays that occur with having cheques sent in and so on.

I have two other questions. Manitoba, I think, has a system whereby it either uses the social insurance number or some identification form for people who default. I think they have a reciprocal system with four other provinces in terms of locating people who quit their jobs. I do not know if that is correct. I am talking about a W5 program I watched one night a couple of years ago. I remember watching it and thinking, "Gee, I wonder why Ontario isn't using that system to locate people who intentionally quit their employment?"

**The Chair:** That is a question you posed to yourself. Do you now want to pose it to the minister?

**Ms S. Murdock:** I am asking.

**Hon Mr Hampton:** On the first question, Ontario has a reciprocal enforcement of support orders agreement with all the other provinces. The issue of locating those individuals who deliberately quit their job in order to avoid paying support orders is a more difficult one. I expect that problem will remain to a certain extent even with support deduction, but I would also suggest that the best way to counter that, again, is to try to create the social ethic that the payment of child and family support is a moral responsibility, a social responsibility, a legal responsibility in Ontario. I think we can do that. If we devote more attention to a public campaign—and we intend to do that; that is part and parcel of the legislation—I think we can elicit significant public support so there will be peer pressure for people to pay their support orders. That is probably the most appropriate way of dealing with individuals who may have in the past quit their job in order to avoid paying support.

**Ms S. Murdock:** I have a specific question relating to subsection 3c(8).

**Mr Sorbara:** We are going to do that in clause by clause.

**Ms S. Murdock:** Okay. I did not know whether I was reading it correctly. I figured since we had them here—I can wait till clause-by-clause on Friday.

When this bill was brought up for debate, we were talking about \$15 million being injected into the SCOE system to clean it up. How has that gone?

**Hon Mr Hampton:** Two million dollars has already been spent. That was the amount that was authorized—a little more than \$2 million, actually—for spending on new staff, and we have begun to hire new staff around Ontario. There is a further \$3 million that will be committed when the legislation is proclaimed.

**Ms S. Murdock:** Are those people being kept on once the new legislation is proclaimed, whatever the legislation is?

**Hon Mr Hampton:** We will have an opportunity to look at that when the legislation is proclaimed and do a further needs assessment. The hiring of new staff in December and January is aimed at dealing with the backlog. We simply felt that waiting until this legislation is passed and proclaimed, which might take until summertime, and

it might take until September to implement it, was not acceptable. We had to bring on new staff resources to deal with the backlog now, and the \$2 million has allowed the ministry to hire a significant number of people to help deal with the backlog.

**Mr Sorbara:** A couple of supplementaries on the comments by my friend from Sudbury. Going back to the comments the Attorney General made in response to the comments of the committee members, if you listen to what he said, I think you get the kernel of what is going on in this bill. It is not, ladies and gentlemen, about eliminating child poverty. My God, if you want to eliminate child poverty, let's get out and start creating jobs and providing opportunities for the poor. He said that too much of the branch's time is taken up with garnishment orders. The truth is that the branch could do everything it wants to do under Bill 17, it could do it under its current law, but it has to go through a procedure to register a garnishment order, which is the same thing.

Really, what is going on here, and I have it on good authority because a friend of mine used to be the Attorney General, is a way of dealing with the cost of enforcing this program. In other words, it is going to be cheaper to do it this way, to have an automatic order, than to make determinations case by case and go through the old court procedure to register a garnishment order against a particular individual. There could be a so-called automatic deduction order against all the defaulters if they had enough resources to go out and register a garnishment order, because once it is registered it is an automatic deduction order. But the case load is so huge that they said, "Well, let's get the courts to do it right away and then we won't have to spend resources doing this."

That is a pretty blunt instrument. I know why they are doing it, but to talk about child poverty and to couch it in suggestions that we are going to create a new standard in our society, that people are going to suddenly feel good now, that it is going to become a social and moral and legal obligation that we are very proud of: "Hey, guess what? I just got my automatic deduction order against me." Do people like paying income tax? Are they happy every month when they see the slip that says \$200 deducted and sent to the federal government? No, they are mad as hell. They are not happy about that at all, but the government knows that is the only way it is going to get it so that is the way it is going to do it. To suggest that through an advertising campaign, suddenly people are going to start feeling real good about this stuff flies in the face of the terrible emotional trauma that often is associated with this whole business.

1440

Let's not be fooled by the minister's rhetoric and, frankly, by the rhetoric of his department, which needs this thing in order to keep costs down. This is about keeping costs down, not about fighting child poverty and not about creating a new drunk-driver standard in Ontario: we all abhor that now, and we all abhor this business of welshing on your support payments. That is not what it is about. It is about the problems associated with administering a cumbersome

garnishment procedure in Ontario. Maybe really we should be changing that.

The other thing I want to say about that process—

**The Chair:** Are you asking a question?

**Mr Sorbara:** Yes, I am going to ask a question, as a matter of fact. We do not have to take up much of our time any more with administering to ministries, so we take up our time on committees and that is what we are here to do.

He suggested there are only two options to get out of this automatic deduction order: unconscionability, and the courts will figure out what that is on an ongoing basis, and the agreement as between the spouses and the payment of a security. What I want to tell the minister and what I want to tell this committee is that if we could find a better way of doing that, if we could just pretend for a little while that we are as smart on this committee as are the minister's policy advisers and the people in the branch, and I submit to you that we are, we could find maybe a third mechanism to make this system work more effectively to save the branch the money it is going to save by way of this bill, and to make life just a bit easier for people on both sides of that matrimonial breakdown.

I want to ask the minister whether he is going to be open—I am talking about really open—to amendments to this bill that will do what I have just proposed. I know that ministers are often not open to having their bills changed. I have on occasion been a minister who is not open to having a committee mess with his bill. I just want to ask him, in all sincerity: Are you open to it? Are you prepared to let this committee do some work around reshaping the exceptions to this new measure, or are you just going to let the people come before the committee, have their say and then, by God, have it passed the way in which you have presented it or else? Yes or no?

**Hon Mr Hampton:** Mr Chairman, you have a unique procedure here. People who come before the committee listen to a speech for 20 minutes and then are asked to say yes or no. I understand they used to allow this in the Kremlin.

**Mr Sorbara:** You have the floor. You can talk for as long as you want.

**Hon Mr Hampton:** Let me answer all of the questions that are inherent in Mr Sorbara's comments.

First of all, there is a very big difference between payroll deduction and garnishment. If you speak to family law experts, lawyers, judges, if you speak to the person on the street, the word "garnishment" carries with it a stigma, and a very big stigma. The word "garnishment" to an employer means: "We have a troublesome employee here. We have somebody who can't pay his bills or who won't pay his bills." When you have a garnishment order against you, you may find it is difficult to get credit, etc. So do not compare garnishment with payroll deduction.

**Mr Sorbara:** But I am saying change garnishment.

**Hon Mr Hampton:** Garnishment has a long-standing stigma attached to it, and for that reason it is just not a very good way to proceed.



**Mr Sorbara:** But you are the Attorney General now and you can change the law relating to garnishment. You can take away that stigma.

**Hon Mr Hampton:** I think I should point out something else to you. Under the existing legislation, garnishment orders are not difficult to achieve. In fact, under the existing SCOE legislation, garnishment orders are almost automatic. It is not the procedure we are worried about here, it is not that garnishment is time-consuming necessarily. That is not the problem.

I just want to point out that there are real problems with garnishment, but the procedure is not one of them; it is the stigma that is attached. That is what we want to move away from. We do not want people in the province to believe that paying support is a stigma. We want to move away as much as possible from all of the stigma that attaches to the word "garnishment."

**Mr Sorbara:** You are saying then that by levelling an automatic deduction order against someone who is going to pay anyway, that is taking away the stigma? Come on, you are dreaming in Technicolor if you think that is going to happen, or if you think that banks are going to give you a better credit rating because \$200 is coming off under an automatic support order rather than \$200 coming off under a garnishment. The banks want to know how much disposable income you have, not whether or not the word "garnishment" is there.

**Hon Mr Hampton:** I will answer the original questions and I will skip the editorial comments.

Again, the concept that we are trying to reach here is that if we set a target goal of, say, 60%, if we can achieve either total or partial payment by means of support deduction in 60% of the support orders, we will then, we believe, be moving away from the stigma that has attached. We believe, and we may be wrong, but we think this is a good enough idea that it is worthy of a try.

We believe that it will be socially acceptable, that there will not be any stigma attached if it becomes recognized socially that when you have a support order against you, it means payroll deduction, that when you look down your paycheque you will see so much deducted for income tax, so much deducted for Canada pension, so much deducted for UIC, so much deducted for your registered pension plan and so much deducted for support orders. We think we can move away from all of the stigma that is now there with garnishment orders and we think we will have found something that is much more socially acceptable and that people will respond to.

**Mr Carr:** One of the questions I have—and I agree a little bit with Mr Sorbara, I thought the intention was to get the money into the hands of the children, not to set some social norm—but when you look at the situation with the court backlogs and the rent review situation which gets backlogged and so on, I am looking at it from the standpoint that if we can eliminate those 25% who would normally pay out of the system, will we not be able to get the money that we are looking to get to the people most in need for that other 75%?

You talk about the number of cases. If we can eliminate 25% of those cases, is it not going to make it easier, or am I missing something in the process? I am thinking if we can eliminate some of them who would normally pay—and you talked about the staff and how much time they have allotted—would it not free people up if we can eliminate the people who get the money that would be coming in?

**Hon Mr Hampton:** What you will find as you go through clause-by-clause consideration of the legislation is that what we have tried to build in here is a system, for example, that the business community feels it can buy into. We have tried to put in place a system that will be relatively easy for the courts to deal with and a system that will in essence be a model that is computer-monitored, so that it will require very little staff time to deal with support deduction orders.

Once an order for payment of support is made by the court, it will be a simple form that can be checked off. That form immediately goes to SCOE where it is placed on the computer, and as well a copy goes to the employer indicating when the support deduction is to be made, how much is to be made and where it is to be mailed to. So what we believe we are putting in place here is a system that will simplify a great number of steps and that the child and family support office, the courts and employers will find very easy to comply with and one that is not at all time-consuming.

1450

Just to go back to your original remark, if we are able to move compliance up to 50% or 60% by means of using this system, we believe it will of course accomplish two things in terms of children. First of all, there will be a greater amount of money flowing in the aggregate, and second, the money will move more quickly. In other words, delays in terms of garnishment orders, delays in terms of tracing will not be as prevalent as they are now, and in that sense, I think those will be wonderful contributions to the welfare of children and dependent spouses in Ontario.

**Mr Carr:** Presumably, that is why 3b was put in there, though, to speed it up, and it includes your four months' security. Presumably that is to keep the people out of the system who should not be in there, I assume.

**Hon Mr Hampton:** If you want me to refer specifically to the four months, the finding in the past has been that, where you have had a default, it will take up to four months to get money flowing. So that four-month period is the time that we think that the child and family support office will need. Where someone has opted out—let's assume someone does opt out in the future—and then defaults, that will be the four months that we will need. So there should not be any interruption of funds in that case. That is the reason for that.

**Mr Carr:** I see. I guess the big question that I want to ask of you, which really speaks to the whole situation, is what your perception is of why people do not pay. Is it because they do not have the money or because, as you may have alluded to, a high percentage of them feel that

they do not have to? How much of it comes into access? That is why I think Mrs Cunningham's question is very important: What are the reasons people do not pay right now?

I was just wondering if you could give us some thoughts, maybe list them in terms of one, two, three, on the reasons why people do not pay. Is number one the social situation, that people feel they do not have to pay? Is number two because most of the people or a lot of the people do not have the money to pay and they disagree with what the court has said? Does number three get into access, where somebody says, "I can't see the kid so I'm not going to pay"?

I am just trying to get overall the broad sense of why people are not paying.

**The Chair:** I am wondering, Mr Carr, since that question came up before with Mrs Cunningham's question, if it might not be possible for us to get materials that we could have on that presently.

**Mr Carr:** Yes. I was looking less for statistics, more just the Attorney General's perception. Obviously his perception is very important, and he can just maybe give us overall the rationale behind the legislation.

**Hon Mr Hampton:** I cannot give you the reasons in priority order, but I can say this: I recognize from discussions that have gone on around SCOE in the past and around Bill 124 in the past, that in some cases failure to pay support is related to access. As a government, we hope to be addressing that issue shortly, and I look forward to any points that you want to make on that in a helpful way.

**Mr Carr:** Do you think that would be very high, though?

**Hon Mr Hampton:** I cannot accurately say at this time. Put it this way: I have had discussions with audiences where I would come away thinking that it is related in 90% of the cases—

**Mr Carr:** And at other times—

**Hon Mr Hampton:** —and I have had discussions that lead me to believe it is not a serious problem. We just do not have the statistics. But one of the problems that we see is that for too many people there seems to be the attitude that the marriage is over or the relationship is over: "They're not my kids any more. I don't have to pay support for them. I can go on about my business." That is a very large problem and it is a problem we think we can deal with significantly with this legislation and with the public relations campaign that we want to build into it.

The message we want people to receive is that you have to take care of your kids and that a big part of taking care of your kids is payroll deduction, so that in the future people will begin to recognize that even if a marital or spousal relationship has ended, the obligation to support children and to support a dependent spouse remains.

**Mr Carr:** I just wonder why we could not have done ad campaigns to try to change the social norm before we went to this stuff. It would seem to me we would try that, because you mentioned the drinking and driving and it did work in that case, and I was thinking that maybe some-

thing along those lines, if we put as much effort into it, we probably could. Your analogy about it being acceptable before was quite true. I went to university and it was acceptable. It is not now and what I was thinking was, before we put this law into place, we should try some of these things. I, as a father of three, find it very strange that anybody does not accept his responsibility, but I am just wondering why we did not do that first before we went to this mess of—

**Hon Mr Hampton:** What it boils down to is that we could deal with this type of family law reform piecemeal or we could deal with it altogether. What we are trying to do is to deal with it altogether. We are trying to, for example, change the name of an organization that has developed a not very good reputation. We are trying to improve the staffing level of that organization. We are trying to give them legislation which will give them significant, new and significantly different tools to work with and we are trying to do the public relations work necessary to give all of it a good chance of success.

**Mr Carr:** You see, where I am coming from is that we all agree we want to get it into people's hands, but every time we do something—and Lord knows we do not need to tell you about court backlogs and what happens when we get involved in something like this. The rent review started out as a great idea and then we got into backlogs of six months. My theory is that we are going to do the same thing in this case and we are going to end up in the same type of, for want of a better word, bureaucratic nightmare.

I was just wondering if there is anything you can do outside of—maybe even give us some of the facts and figures that could alleviate some of my concerns in terms of numbers of cases coming through, the amount of staff to handle them—how are you going to make the members of this committee rest assured that we are not going to get into a situation where it gets ahead of us and then ultimately the children and the families do not get the money that we so desperately want to see in their hands?

**Hon Mr Hampton:** What I can tell you is that where this has been tried, for example, in Wisconsin state, it is proving to be successful. I am not going to tell you it is a total success, but it has improved the success rate. Information we have from Australia is that it has improved the success rate there as well. The fact that, for example, the United States is passing federal law which will require all states to introduce this type of legislation indicates that there is a fair body of opinion that says this will work.

**Mr Carr:** I have some more, but in the rotation, I do not want to take all the time at once. Hopefully, there will be some more time at the end.

**Mr G. Mills:** I suppose, like any of us here who do not support this bill, it is really like saying that you do not love your mother. We all support this bill, I hope, but having said that, I know that when I read it over and tried to digest it, I said that in some instances it was almost like sending a teetotaller to an AA meeting in that if he was paying, why go through this exercise?



I have a lot of agreement with some of the comments that have been made along those lines here this afternoon, that it would be wonderful if we could fine-tune something to be so wonderful that that would happen. But I guess my question is that the 75% we are talking about is not 75% of the people all the time, it is a revolving 75%, and I suppose, Minister, your answering that would answer my concern about all the sort of involvement with the ministry to collect from people who seemingly would be good customers, good people.

I suppose another concern I have is about the people who live secret lives. There are people out there and probably nobody knows they have got a child somewhere. It concerns me that the person could be sort of keeping that very much to himself and then, all of a sudden—and I really have difficulty knowing how we are going to keep this payroll that secret, because people talk and once that is registered on there, you are done like dinner for sure where you work. I just think it would be kinder and gentler to people if some mechanism could have been built into this bill.

Do not misunderstand me. I am a supporter of it. If people could sort of come to grips with what they really wanted to do with their lives, I would be happier with that, but I know that we cannot. We do not live in a perfect world and we cannot have everything perfect. I just thought I would like to mention those things in a non-partisan manner here, but I do support the bill. I think it is a wonderful piece of legislation and the people who come into my office are fully supportive of it. I have not had one person phone me or write me saying that he or she does not like it. The input I am getting is 100%, and it is about time. We are glad it is coming. Nevertheless, I would just like to personally put out those couple of thoughts that I think about in my mind.

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**The Chair:** Do you wish a response?

**Mr G. Mills:** I think the minister has said the 75% that we are talking about is a revolving 75%. We are not talking with the same types all the time, and that is why, I suppose, this thing will not work unless we do it this way. Is that fair?

**Hon Mr Hampton:** Your perception that the 25% roughly who pay and 75%, more or less, who do not pay are not a static group is correct, and therefore, the support deduction aspects of this will help. It is important to realize that even people who have good intentions, who start out saying, "I intend to pay all my child support payments," sometimes fall off the wagon. That in itself can create problems that result in a lot of argument, a lot of frustration and a lot of fighting between former spouses that is unproductive.

In that sense, implementing support deduction may actually avoid a lot of that, especially if it becomes the social norm: "I pay support by means of support deduction. Some of the people who work with me pay support by means of support deduction, and other people that I know...." It then becomes the social norm and we think in the longer term again, in combination with some of the other measures we want to implement, this will work and

it will be seen as without stigma and something that is a positive step.

**Mr Kwinter:** I would like to pose a question to the minister. In regard to this 75% figure, have you done any projections of what you expect that number will be when this particular Bill 17 is fully implemented?

**Hon Mr Hampton:** The target that we have been looking at, based upon information from the United States and elsewhere, Wisconsin, we think that achieving a success rate of 50% to 60% is possible within two years.

**Mr Kwinter:** So the 75% figure will turn to somewhere between 35% to 50% non-compliance?

**Hon Mr Hampton:** Now I should say to you that by better targeting the other enforcement resources we have, we may be able to reduce that even more, but talking about this specific legislation, we think that within two years a 50% to 60% success rate is achievable.

**Mr Kwinter:** I do not know whether you have done any analysis. Is there any correlation between the number of people who are regularly employed and the 75% who do not pay?

**Hon Mr Hampton:** What experience tells us again, and in part you are referring to the same question Mr Mills raised, is that the 25% who are paying and the 75% who are not paying—people move in and out of those categories for a number of reasons, and employment or regular employment is one of those reasons.

**Mr Kwinter:** Let me tell you the reason for my questioning. I am trying to relate to a situation that is not identical, but creates some concerns for me. That is the issue of pensions in that because private pensions plans are not voluntary, generally speaking governments—I was as guilty as anyone when I was the Minister of Financial Institutions and my colleague was the Minister of Financial Institutions—because you can target those people who have pension plans, you implement measures to improve those and to make it more onerous for the people who have those, whereas because a lot of companies do not have them, you can do nothing about that.

What you do is you have people who have nothing to do with pension money, that do not want anything to do with pension plans, and the reason they do not want anything to do with them is they say: "Look, there is the reason. You see what the government is doing to the guys that have pension plans. I am not going to have any part of it." So what you have is a disincentive to get into a pension plan because the minute you do it, you are subject to those controls, whereas because it is not mandatory, as long as you stay away from it, you do not have a problem.

If you are going to be deducting child support payments at source, my concern is that immediately those people who want to circumvent it are going to set themselves up in a position where they are not getting any salaries per se. They are going to structure it in such a way that they are changing their jobs, getting to become casual workers, whatever it is, just so that it cannot be targeted in such a way. You may find that instead of getting a better response, you may get a worse response.

I know you have taken a look at Australia and Wisconsin and there seems to be some merit in doing this, but I am concerned that people who feel that this is a further intrusion on their ability to have control over their lives will immediately start working on ways to circumvent it. You may set up a level of frustration where instead of helping the matter, you may be in fact exacerbating the situation.

Do you have any feeling on that?

**Hon Mr Hampton:** Yes, I do. I disagree with you.

**Mr Kwinter:** There is nothing to disagree with. I was just telling you. I was just putting forward a proposition.

**Hon Mr Hampton:** Your point is well taken, but I think we disagree on the outcome. Again, the information we have is that there may be a minority of people, and we believe it is a small minority of people, who will quit their job or will arrange their income in such a way that it cannot be reached by payroll deduction. But we believe that over time the majority of people will accept this as the ordinary course of things. We also believe that by co-ordinating a well-targeted public relations campaign we can dissuade some folks who might otherwise think about that from doing it.

But also, you are going to see as you read through the clause-by-clause, that we have given, through regulation, the flexibility, we believe, to include other income sources in addition to what you and I might say is the usual income source; that is, paycheque arrives every two weeks or paycheque arrives every month. We believe that if we apply ourselves thoughtfully in the regulations, we will be able to widen the net so that the social acceptance of payroll deduction will be increased, and it will be increased across vocational lines and across income groups as well.

I have heard the comments here that this will work only against working-class people or people who do not have the highest incomes. We do not think that is so. We think that by using the regulations, as I said, thoughtfully and creatively, it will not be just a measure that deals with working- and middle-class people, it will be much broader than that.

1510

**Mr Kwinter:** Can I give you another hypothetical situation? Let us say that I was a payer or a potential payer or a supposed payer and I now see that this is going to be made a mandatory deduction from my salary. I go to my employer and I say: "I want to change the arrangement that we have, our terms of employment, and I want to have a personal service contract. In return for my services, I want to be paid X."

You cannot do it if you are working on a production line or something, which means that the point you were making that you want to broaden it out to include not just those people who are hourly rated employees or people of that kind—what I am saying is that the minute you start creating greater sort of constraints on the person's financial flexibility, he is going to start thinking of ways to circumvent it. It is like every time the government brings in a new tax measure; the accountants immediately start to work on, "How do we get around this thing and how do we create some kind of structure that lessens our liability?"

I am acting as the devil's advocate. I am not proposing these things. I just want to know what happens. Do your amendments—I have to apologize because I am just a substitute on this committee and I have not really gone through them—contemplate dealing with those non-traditional forms of compensation or arrangements?

**Hon Mr Hampton:** Again, that is what we intend to do through the regulations. We may meet some creative avoidance techniques. We may; we may not. We believe the regulations will allow us to deal with many of those, but the goal and the objective here is not to be too concerned about the minority of folks who may, for example, quit their job to avoid paying support, or the minority who may have the inherent flexibility to change the way they receive income.

Our goal here is to build a mechanism that will be socially supportable and we believe by the mail we are receiving, for example, at the ministry, this is not only socially accepted but is very much socially supported. So we think we are meeting that goal. It will be socially supported and it will be effective and efficient in the majority of cases. We think we have that.

Once we have that, we can then fine-tune those other situations. Where we find someone, for example, who absolutely refuses to pay support to support his children or to support his dependent spouse, then you have all of those enforcement mechanisms that we have found to be not too effective in the past. We can resort to those in the future. They are more painful. They are a little bit more bureaucratic. They do carry with them a stigma for the person who appears in court under a garnishment order and that garnishment order is then served on his employer or served on whoever has a services contract with him. We can do those things and it may be that we will have to.

By and large we think this legislation and the other things that are complementary to it will allow us to do something that is both socially acceptable and will be effective and efficient in the majority of cases.

**Mr Elston:** I would first of all like some guidance from you, Mr Chairman. I had started out at the earliest stage wanting to ask a question about that four-month rule and I was told to wait until Friday, but I was propelled by the questions asked by the Tories on it and they were allowed to proceed.

**The Chair:** Go ahead.

**Mr Elston:** First of all, since you are asking for a four-month deposit for a buyout of this bill, do you not think that will offend the poor people who cannot put that much money together? They will never be able to put four months of money into a security account, it seems to me. Wealthy people can.

**Hon Mr Hampton:** I want to point out a couple of things that go along with it. First of all, before someone can come under that exemption, there has to be joint—

**Mr Elston:** A consent.

**Hon Mr Hampton:** There has to be agreement by both parties.

**Mr Elston:** No question. I agree. We will give that to you. There is a consent.



**Hon Mr Hampton:** Okay, so we think that you are unlikely to see agreement from both parties in most cases.

**Mr Elston:** It is not true.

**Hon Mr Hampton:** Well, we can disagree on that.

**Mr Elston:** Listen, somebody is going to go into the negotiations and say: "I really do not want to get into this thing. I'll give you an extra \$25 a week if you'll let me get out of this bill. Will you take the \$25 a week? My client really doesn't want to have his wages subject to this order. Another \$25. Do you mind? And we will get out of it?"

Now if I happen to be a wage earner who is just making do, I cannot even ask for that consent. Even if I do get the consent, chances are, if I have already got myself piled up to here with obligations, I cannot find four months' worth of stuff. You are living in some kind of dreamland if you do not think that the wealthy are going to be able to buy themselves out of this thing and the poor people are going to be left trapped.

**Mr Sorbara:** That is not the distinction you want to make.

**Mr Elston:** Let's just say that I will take your point and we will disagree on it.

**Hon Mr Hampton:** That is just the first point. I am waiting to make the second one.

**Mr Elston:** You can make your second one now.

**Hon Mr Hampton:** The other point I think you have to recognize is that by and large, where you are dealing with an individual who is wealthy, the support payments may be appreciably more, and measured against income may be a lot more, so that paying four months in advance, even for someone who has a fairly good-paying job—

**Mr Elston:** It does not hold up.

**Hon Mr Hampton:** —will simply not work out

**Mr Elston:** Let's give you your dream on that one and let's move to the second part of it. I end up having a client who puts four months' worth of money into an account. What sort of interest is paid on that while it is sitting there as security against his default, or her default now?

**Hon Mr Hampton:** We may want to get into that in clause-by-clause in terms of—

**Mr Elston:** No, we do not.

**Hon Mr Hampton:** —working out the details.

**Mr Elston:** So you do not know. Basically you have not worked that part out.

**Hon Mr Hampton:** Quite frankly, I can say this: We do not anticipate—

**Mr Elston:** Many being able to opt into this.

**Hon Mr Hampton:** —that there will be many people opting out.

**Mr Elston:** Ah, good.

**Hon Mr Hampton:** That is the goal.

**Mr Elston:** Basically this is a false hope. Somebody looks at this and says, "You can buy your way out if you can put up four months' worth of stuff, if you can get your spouse to agree and you can afford the four months." But what you folks are really banking on is that to make sure

there is an ease of administration, there will not be anybody either agreeing or being able to afford it. Is that not right?

**Hon Mr Hampton:** I think I have been quite upfront about that. We hope to have a situation in the future where the vast majority of support orders are paid by means of payroll deduction. We think if we can accomplish that, we will have something that is effective and socially acceptable, and indeed will become the social norm and no stigma will attach to it.

**Mr Elston:** I know what your counselling has been in terms of the right words to use in the committee, but you do not have to repeat them for every question. We will take them as a given in most cases, okay? Let's take a look at the 75%. We have 83,000 cases now and these questions that I am embarking upon now will actually comply more specifically with your remarks. They should not come as a surprise to most of the staff who are here, because we started talking about this last Thursday. I had asked for some more specific-type information, but it did not come out in your remarks and it has not come from any so far at all, although Ellen Mary has not been able to participate or whatever. But 75% of the 83,000 cases now are in default. Is that what you are alleging?

**Hon Mr Hampton:** To be accurate, are in default or in partial default.

**Mr Elston:** Or have been in default at some point, but may not now be in default. Is that right?

**Hon Mr Hampton:** I believe if you measure total compliance and partial compliance, you can get up as high as 35%, sometimes 38%.

**Ms E. Mills:** I think we would just like to point out that the 25% is a historical average. For the people who are fully complying, it can vary month by month. It can dip down to 20%; it can go back up to 25%. We are using the 25% as a relative average of those in full compliance.

**Mr Elston:** So what does the most recent month's statistics tell you?

**Ms E. Mills:** It is more like 20% in full compliance.

**Mr Elston:** By full compliance you mean no arrears.

**Ms E. Mills:** No arrears, and if you take those who are paying partial payments or there has been some payment made in the last 60 days, you take it up to 35%. The percentages are always varying slightly.

1520

**Mr Elston:** In using the 75% at the moment, it would lead somebody who was not aware of the circumstances to believe that three out of every four support payers were in fact in default at this very moment and that might not be quite true. Is that right?

**Ms E. Mills:** As I said, if you took full compliance, it is even less on the run in January.

**Mr Elston:** Okay, so we will say 20%; four out of five are not in full compliance, but there are fewer than four out of five who are refusing to pay, right?

**Hon Mr Hampton:** Yes, there are people—

**Mr Elston:** For one reason or another, I may end up having a client who in fact has a small amount owing as a deficit against his payment account and it may be because of illness or it may be because he lost his job; it may be now because he is laid off.

**Hon Mr Hampton:** Or it may be, and this is sad to say, but you reach the situation where someone has paid support payments, has been in full compliance and he decides, "Gee, I would really like to buy a new car." So they buy the new car.

**Mr Elston:** It could be any number of reasons.

**Hon Mr Hampton:** Yes.

**Mr Elston:** It may be that some of these people are not in compliance because they have experienced the very sort of basic human emotion of "I want to get even" or "I want to hurt somebody" or something like that. It is not that they do not find it socially acceptable or whatever other words there are or that they do not think they are responsible. Some just may succumb to the very human emotion, I take it.

**Hon Mr Hampton:** That is right.

**Mr Elston:** Okay. I want to talk about the child poverty issue, which you have brought in here to try and equate this with eliminating child poverty. How many children in poverty in Ontario are also subject to support payment orders? Do you know?

**Ms E. Mills:** Eighty-nine per cent of all the orders that are filed with us involve children and the number of children involved—

**Mr Elston:** So 89% of 83,000 orders?

**Ms E. Mills:** Eighty-nine per cent of all the orders filed with us involve children, and the estimate for the year 1991 of the number of children is 107,000 children.

**Mr Elston:** Okay. Will you be filing some of these statistical items, because we were hoping to get some of this material?

**Ms E. Mills:** This page we can definitely file because it was prepared for the estimates review in the committee that deals with the estimates.

**Mr Elston:** Are there some stats that you cannot file with us? Is that what you are telling us?

**Ms E. Mills:** Most stats I am working from are from here and some we have taken off our computer just today.

**Mr Elston:** What does the figure one in five children in Ontario living in poverty equate to in absolute terms? That is your figure. You say one in five children in Ontario is living in poverty.

**Hon Mr Hampton:** I do not think we have that, but I believe there is information that indicates that many of the children, many of the 100,000-odd children that we are talking about here, are in that situation.

**Mr Elston:** Do you know absolutely how many of the children—

**Hon Mr Hampton:** I do not know the absolute numbers, no.

**Mr Elston:** —are subject to payments through Community and Social Services?

**Ms E. Mills:** Yes. Of the 83,000 cases we are speaking of at the moment, 23,179, to be exact, or 27.7%, are assigned cases, meaning with the Ministry of Community and Social Services.

**Mr Elston:** So it is 30,000 of the 107,000 children, roughly?

**Ms E. Mills:** I cannot equate. I do not know how many children in those cases. We are always looking at the statistics in different streams—

**Hon Mr Hampton:** We are talking about the number of support orders here?

**Ms E. Mills:** Yes.

**Hon Mr Hampton:** Eighty-three thousand—

**Mr Elston:** I understand that. Eighty-nine per cent of the 83,000 have children attached to the family unit. Of that, there are 107,000 children covered and now you are saying 27% of the cases, or 23,179, are subject to orders of assignment to Community and Social Services. But we do not know, of that number, how many children would be included.

**Ms E. Mills:** How many children are necessarily attached.

**Mr Elston:** I was just trying to get the direct correlation between your attack on poverty and this particular piece of legislation, since it is one of the planks upon which you rested your case. Can you tell me then how many children you expect or you guess will be assisted by this and in fact fall out of poverty—or climb out of poverty might be better?

**Hon Mr Hampton:** We do not have the hard statistics.

**Mr Elston:** So is this just a little buzzwording?

**Hon Mr Hampton:** No. Again, the ministry went through a lot of consultation with a lot of organizations on this, and frankly I would be willing to say that the vast majority of the 107,000 children are not by any means financially well off. The majority of them are in difficult circumstances.

**Mr Elston:** Would you say 80,000 of 107,000 are actually covered by that 27%?

**Hon Mr Hampton:** Might be.

**Mr Elston:** Can your staff find that out? Can you find that out for us?

**Hon Mr Hampton:** Sure.

**Mr Elston:** You have built a case and you have made a very strong case and in a sense it is that if we are going to be doing something, this particularly is a place that we should put our efforts.

**Hon Mr Hampton:** Sure.

**Mr Elston:** So we should know exactly how to accomplish it.

**Hon Mr Hampton:** I think the other important part of this case is that statistics also show that the fastest-growing group that has income difficulties is single-parent mothers with dependent children.

**Mr Elston:** Yes, okay. I would not fight with that. I wonder if you could tell us about, as you talk about on



page 6, the rapidly increasing case load. We heard on Thursday that there is a growth—I think you repeat the stats in here—of about 1,200 new cases per month, which will take you into a huge number later on. It is indicated here in page 6, first paragraph, that there is a significant decrease in the level of service being provided to the public. Can you tell us what that decreasing level—

**The Chair:** Excuse me, Mr Elston. Before the minister answers that question, Mrs Cunningham did have a question earlier, and we are running out of time.

**Mrs Cunningham:** No, this is fine. It is fine if we are running out of time. These are good questions. I am happy to have him pursue them.

**The Chair:** Thank you. Go ahead, sir.

**Hon Mr Hampton:** Yes, if I can answer that, there is a historical problem here, or a historical issue. When SCOE was created, it created some expectations in terms of public expectations and when you have a relatively small case load, you are able to meet that case load and you are able to do some excellent things. That attracts more clients and that also attracts more clients with difficult problems so that over the three years not only were there more and more orders being registered with SCOE but there were also more and more orders that you could term problematic in the sense that the individual perhaps did not have full-time permanent employment or the individual would not pay and so on. So over a three-year period that problem grew and grew and grew and that was one of the reasons why over \$2 million was allocated immediately to deal with the backlog problem and hire more staff.

**Mr Elston:** Yes. That does not take me any place. I just asked you for what were the decreasing service levels. That was my question. I did not want to hear the rest of the stuff. You already told us that three times.

**Hon Mr Hampton:** The decreasing service levels?

**Mr Elston:** Yes.

**Hon Mr Hampton:** Simply you had more and more cases. You had more and more orders that were coming in that could not be gotten to.

**Mr Elston:** Actually, it is really along the line that Ms Murdock talked about earlier when she said she had people calling her office. Basically they called her office when she was a constituency assistant because they could not get through to SCOE presumably and they could not get a good result. I wonder, because I talked again on Thursday to your assistants here and indicated that one person had sent me a note wherein he complained he actually wrote a letter to the SCOE department saying that he called and it took him two and a half hours to get through. Then, when he finally did get through, he was on hold for 28 minutes and then when he tried to speak to somebody who had sent him the letter, he was told he cannot even get the name or he could not be referred to that person because she writes letters, she does not answer telephones. So I mean, he was a little bit browned off.

**Hon Mr Hampton:** If I can respond, when we became the government there was a large historical problem there.

**Mr Elston:** This happened three weeks ago.

**Hon Mr Hampton:** Oh, sure, sure.

**Mr Elston:** It is not just our problem.

**Hon Mr Hampton:** There were literally thousands of orders that were sitting in backlog that SCOE simply did not have the staff to even open the mail or even perform a telephone response on, and that is part of that backlog that had accumulated over three years.

**Mr Elston:** Yes.

**Hon Mr Hampton:** We found we had to hire more staff to deal with that backlog. So yes, it is true that we have cases there, orders that have been sitting there for I think six months.

**Mr Elston:** Okay. So if Ellen Mary Mills can talk to us.

1530

**Ms E. Mills:** If I can just respond to the telephone one, in addition to what the minister has said, I think you are all aware that in the past year we introduced the central inquiry—which is the 1-800 number—and it means that people can call in and if they are after the last action that happened on their case, when the last payment was received, very specific information, they can get it.

I do want to say that we are getting complaints because people as well do not like using it. They want to talk to someone personally. But the reason that was put in place is that the longer you take, the more time you take those enforcement representatives off what they should be doing, which is around tracing and locating and updating their cases. I wanted to raise that point, so sometimes it depends. We would have to look at the specifics of your case, whether he phoned the office or the central inquiry.

**Mr Elston:** Sure. He phoned and he has written a letter to, I do not know, the London office, where they told him, since he was so angry, that he should write to them. But he was really concerned about the person who wrote and told him such-and-such was going to occur and when he wanted to talk to that person, he was told: “No, you can’t talk to that person. They write letters, they don’t answer phones.”

Second of all, he found that the people who were willing to talk to him were the ones who gave him the general information, who were of no help to him because they did not know any details about his particular situation.

**Ms E. Mills:** We will have to look into those situations, but generally speaking you find people who are objecting to what is in the piece of paper and wanting to give the extraneous circumstances, which in many cases do not alter the circumstances—

**Mr Elston:** True.

**Ms E. Mills:** —of the garnishment going forward. But it is like the court, where you have your traffic fine and you want to go in and say, “Yes, I ran the red light, but.”

**Mr Elston:** They can do that, actually.

**Ms E. Mills:** I know, but unfortunately in our situation it is not going to change the garnishment and it only takes away from our staff time to be able to hear that, but we are looking at it.

**Mr Elston:** It does not help the public relations side of it, does it?

**Ms E. Mills:** No, I know, and that is one thing we will have to work on. There is not a one-to-one case worker relationship and a lot of the public assume that.

**Mr Elston:** What is the case worker ratio now?

**Ms E. Mills:** Well, the overall staff is 263 for the program.

**Mr Elston:** Yes, but not all of those are case workers.

**Ms E. Mills:** No, they are not. Actual strict enforcement representatives—it is about 114 across eight regional offices.

**Mr Elston:** So 114 for currently 83,000. You had started to get into some of the material that I was interested in earlier. I think Mr Hampton had mentioned that it was probably a six-month wait for even a brand-new case at the moment coming into your office. Is that a current statistic?

**Ms E. Mills:** It is not a statistic I have seen. We are trying to address that. I feel we need to address the new ones first and sort of nip them in the bud and not let them get into that cycle of default, where there is no response from the branch. So we are looking at how we can deal with that, without neglecting our other cases.

**Mr Elston:** So the 1,200 new cases per month—

**The Chair:** Mrs Cunningham has indicated that she does want a question, and we have run out of time.

**Mr Sorbara:** Mr Chairman, could we not indulge upon the minister's time to stay an extra 15 or 20 minutes? This is his only appearance before the committee and we have questions about the bill.

**Mr Elston:** Perhaps I could just finish this item and then let Dianne go ahead. I mean, it is in terms of the service level, because if they have 114 people now doing 83,000 cases and you are getting 1,200 new ones a month, how in the world are we going to deal with doing them all? We are already complaining about decreased work coverage.

**Ms E. Mills:** It is not quite that simple. Those are the actual enforcements reps. Behind them are mail file clerks and other clerks who do some of the initial data entry and the mail opening, etc. But if we are really looking at enforcing the provisions of ensuring that it gets paid, we are talking about the enforcement reps who are into the trace and locate, etc. Those are the key people if it is not a routine situation. I would have to look at the staffing and break it down some various ways for you, but those are the enforcement reps.

**Mr Elston:** Could you do that?

**Ms E. Mills:** Sure.

**Mr Elston:** I mean, not now, but you could go back and deliver us the material?

**Ms E. Mills:** That is right, and we were trying to do that before. It has never been done.

**Mr Elston:** If I might, after Mrs Cunningham has had her questions, perhaps I could go back on the list, or at the end of the list rather, please.

**The Chair:** We then have the question Mr Sorbara posed. Should we continue for any period of time, and if so, for how long?

**Mr Elston:** If Mr Hampton is unable to stay, certainly his staff is going to be here. We can understand he is busy.

**Mr Sorbara:** We could see the minister staying for another half an hour.

**Hon Mr Hampton:** If Mrs Cunningham has some questions, I will answer hers, because she was on the list.

**The Chair:** Thank you. Mrs Cunningham?

**Mr Elston:** This is her second appearance.

**Mrs Cunningham:** Yes, but I will let you go before me if you want to go by the list, Murray.

**Mr Sorbara:** We have lots of questions.

**Mrs Cunningham:** We are trying to be fair.

**Mr Sorbara:** Is the minister going to be able to stay until 4 o'clock?

**Mrs Cunningham:** Just on the issue of poverty, you yourself, Minister, raised this expectation thing, and the worse thing we can do is raise some expectations. So on this whole issue of child poverty, let's not kid ourselves. I think you would probably agree and certainly comment that even when we get people to pay up, I am not sure what kind of impact we are going to have. I am not sure it would be significant on poverty, and that is why my very first question of the day was, what is the profile of the person who is not paying? It is important that we know that to the best of our ability. But you are not saying this is going to have a significant impact on child poverty, I hope.

**Hon Mr Hampton:** No, what we are saying is that again, based on the statistics that we have, our own statistics, figures from Statistics Canada, studies that have been done in Alberta, about 80% of the support payers are financially able to pay support and that is the target group. We want to see if we can reach that group by means of payroll deduction. If they are financially able to pay, and the court presumably will make a support order that is in the best interests of the children and we can then find an effective and efficient and socially acceptable mechanism to reach that money, then we think we have something that will be very much in the interests of children and will very much improve their economic circumstances.

**Mrs Cunningham:** I think "very much in the interest of the children and improve their economic circumstances" I would agree with you on. But given the state of the economy and the levels of income even when people are working hard together these days, it will be more fair but certainly I am not sure whether you and I down the road will agree on the poverty. I bet we will. It is tough.

**Hon Mr Hampton:** To be fair to you, I think if we really want to tackle this problem, we would have to undo some of the things the federal government has done over the last eight years in terms of the redistribution of income.



**Mr Sorbara:** Oh no, don't blame the feds. It doesn't sound right on you.

**Mrs Cunningham:** From time to time, in fairness, so that you know I am interested in that, I am working with the federal government right now on apprenticeship programs, on English-as-a-second-language training, and I figure it is my responsibility to do that. I wish I had more hours in a day.

**Hon Mr Hampton:** I am well aware of your personal position on these things and I appreciate it.

**Mrs Cunningham:** Well, levels of government, there is too much government, and of course I think this is more government, what we are doing here, so I want to make sure it is going to be meaningful.

Going back to one of the statements you made in one of the responses, you talked about the case where we are at least going to go for the people who are not responsible. You know, they say, "I'm not responsible for my children, I'm not paying." If that is all we are dealing with, then I can support this legislation, because if that is what we are dealing with, I think this will be helpful.

The other two scenarios are where I have some concern, and one is the case where, and you raised it yourself—you were not sure of the statistics and I commend you for being fair about it—the case where somebody says, "You don't pay up, you don't see the kids." I am not sure this legislation is going to help there. There are other things I think we can advise you on. It may be helpful, but I really would not want to give anybody the impression that it is going to be that helpful. But maybe it will be.

**Hon Mr Hampton:** If I can respond, I would agree with you that these measures alone will not deal with those situations, which is why we have to do something meaningful in the area of access, and as I have said before, and I will say it again, if you have some advice in that area we would be happy to hear from you.

**Mrs Cunningham:** I think I do and that is probably why we will be coming forth with one of the amendments, but as I have not looked at yours I cannot say you have not already brought it forth. If you have been listening to the input, maybe they are there, I do not know.

**Hon Mr Hampton:** I should tell you we do not intend to deal with access in this legislation.

**Mrs Cunningham:** No, but one of the amendments we have put forth will not deal with access but it will deal with the cases where the access is a bigger problem, I think. I agree with you; I do not like having to deal with too much in one bill.

Now, the other one I am really concerned about is the case of the guy or woman who says, "I don't know what to do in this case because," and this is a very old term that goes back to the Depression days, "I don't have a steady job." People who are moving in and out of jobs right now, those are the ones who have difficulty no matter how we chase them, and I know the staff over here will say it. But getting back to the whole thing, I do not want to leave the impression, the raised expectations, that this is going to have a significant impact on poverty, because I do not have the profile and I do not understand how it will have

a significant impact, but I think it will certainly make a difference.

The other part is—and this is my last question—you mentioned that you had consulted with certain groups. I am wondering if we could have that list so that we can see who you have already talked to, as well as who will be coming before the committee. That would be helpful to us. Thank you.

1540

**Hon Mr Hampton:** Without giving you the definitive list, I can tell you that we met with some employer associations to ask them if they felt this could work out. We met with the bar association, Mr Slan, in the family law section. The chamber of commerce was on one of the consultation groups; I think the Canadian Federation of Independent Business was on one of the consultation groups; the Canadian Payroll Association was on one of the consultation groups, and I think the social workers as well, were they not? No? Okay, the social workers were not, but social workers have had continuing input on this in the past in terms of some of their submissions.

We met with the Ontario Federation of Labour, I believe, and some of its member trade unions to talk about this, and we have had ongoing discussions with Support and Custody Orders for Priority Enforcement—they are called SCOPE; I believe they are going to appear before you on Thursday—the Ontario Public Service Employees Union, and we met with a committee of provincial court judges. So that is, to my memory—

**Mr Carr:** Can we get the definite list then?

**Mrs Cunningham:** If your staff has it, it would be interesting for us to know over and above what we see here. It would be helpful. But I thank you.

**Hon Mr Hampton:** I think we can put it together.

**The Chair:** We have, as I mentioned, exceeded the time we had initially allotted.

**Mr Sorbara:** I have a lot more questions. If the minister cannot stay in his first bill before this committee, then perhaps his staff or others would be able to answer the questions. Thank you, Minister.

**Hon Mr Hampton:** Thank you. I appreciate the comments that have been made today and I think you will find we are certainly willing to consider amendments you may put forward. But I hope you appreciate the general goals and objectives that we have in mind with this legislation; that is, particularly if you have something that will help us out with those, we would very much appreciate it. Thanks very much.

**Mr Sorbara:** Am I next?

**The Chair:** Well, you were. However, what I am wondering about is what the committee's direction is now. I believe we were to be meeting at approximately 3 o'clock or 3:30 to receive the report on other committee business. How long should we continue with this?

**Mr Sorbara:** I was given to understand that we were meeting at 1 o'clock with eight witnesses, at the top of the list was the minister himself, and that we were going to complete that business and then have a meeting to discuss

some other things, subcommittee work or something like that.

**Mr Fletcher:** I thought at the beginning of this session we did agree that we were going until approximately 3 o'clock and then we would be talking about the subcommittee and also process. I am sure that is what we agreed upon at the beginning of this meeting. Is that not what we agreed upon?

**The Chair:** It was certainly stated at that time. At a later point Mrs. Cunningham raised questions around process and timing.

**Mr Fletcher:** I know at the beginning I also raised a question about process and timing.

**The Chair:** Okay. Well, we have Mr Wessenger.

**Mr Wessenger:** Mr Chairman, since we are going to be on clause-by-clause on Friday, perhaps a lot of Mr Sorbara's questions could be dealt with at that time in conjunction with the clauses.

**Mr Sorbara:** My questions deal primarily with the policy underpinnings of the act and where the government and the ministry and the minister are coming from as a question of policy. Clause-by-clause is another matter entirely.

**The Chair:** I would like to suggest then that we could extend questions with the staff here for another 15 or 20 minutes, rotating as we have before, as Mr Sorbara I think is quite right. If he is dealing with policy issues, this is the appropriate time to deal with them. Does that extension of time meet with the other members' approval?

**Mr Elston:** I had specifically said, when Mr Fletcher and a couple of others had talked about limiting our access to the people from the Attorney General's department, that I was not prepared to go into time rationing. We are scheduled to sit until 6 o'clock this evening. These people are available, and I think we should be able to go through our list of questions. Some of the material I am going to be asking about is contained in Mr Hampton's remarks, but I am sure the remarks were prepared by his assistants and staff, so they can answer some of the questions and perhaps undertake to bring to us some of the material that appears not to be set out here, just as they have when the minister was sitting.

I would find it quite strange, indeed, if the NDP caucus moved to restrict our access to the department of the Attorney General just when we are trying to understand the basis upon which it is proceeding with the construction of the Attorney General's remarks for this committee's opening day.

**The Chair:** I believe the representatives from the ministry will be here through the full week.

**Mr Sorbara:** But we have no time to question them during the week. We have witnesses.

**Mr Elston:** These are individual witnesses. You have them all stacked up now at 15-minute intervals unless they happen to be a group, in which case we get half an hour. The people are here to talk to us about why the Attorney General's department has constructed the rationale the way it has, and I suspect we should proceed on that basis rather than putting some limit on the flow of information out of the government to the opposition parties.

**Mr Carr:** I would just add that I am free to stay and have, as I mentioned earlier, quite a few questions. I would be prepared to stay. I actually have another engagement, but I would push it off if anybody else is prepared to stay.

**Ms S. Murdock:** There is no limiting to the information the government is willing to give. The purpose of a standing committee is for general information anyway. I think, as far as I recall, when Dianne was speaking earlier, that we did agree that there was some flexibility.

Personally, if the questions are related to policy, I have no objection to them being asked; mind you, on the proviso that we will be interjecting if they go astray, and Mr Sorbara does have a tendency that way. So we will make sure it is pointed, and as long as you clearly understand that I have no problems with it at all, as a personal view.

**The Chair:** So your suggestion—

**Ms S. Murdock:** We have the flexibility here, as Dianne said earlier, to go. We do have the afternoon, as I recall.

**The Chair:** Until what time approximately?

**Mr Sorbara:** Are we done now talking about process so we can get on with the issue that is before us?

**The Chair:** The issue that is immediately before us is how long we address these folks.

**Mr Sorbara:** I do not know. What I do know is that this committee is scheduled to sit from 1 o'clock until 6 o'clock with a number of witnesses, and when we are finished our deliberations in that regard we are to go on to subcommittee business. Why do we not just go along with that? What is our problem?

**The Chair:** What an excellent suggestion. And that has concurrence?

**Mrs Cunningham:** Why do we not just go and see what the questions are?

**Ms S. Murdock:** Yes, right, like I said.

**The Chair:** Next on the list is Mr Sorbara.

**Mr Sorbara:** Thank you. I will begin by saying that this committee does not need the Attorney General here in order to do its work. It can do its work just fine without the Attorney General here, and I am quite delighted that members of the Attorney General's ministry have agreed to stay and answer some questions.

About two and a half months ago the Attorney General delivered a speech in which he was reported to have suggested that he personally favoured the government guaranteeing support orders made by courts and enforced by SCOE. I would like your comments on that, including your comments as to whether I am accurately quoting what the Attorney General said and whether, as a matter of policy, the idea of the province guaranteeing these payments is a matter under current consideration.

1550

**Ms Pilcow:** The only response to that is that I remember the minister saying that and in fact it is something that is being looked at, but it is not something that is being looked at in the context of this bill.



**Mr Sorbara:** So it is not being looked at in the context of this bill, but it is being looked at.

**Ms Pilcow:** Yes.

**Mr Sorbara:** That is very important information for this committee, because if the government is considering that the public Treasury will guarantee support orders made by courts, that is far more significant than the work we are doing today, which gives you new mechanisms of enforcement.

**Ms Pilcow:** The intention would first be to find out exactly how those systems work and then to determine whether they are feasible for Ontario.

**Mr Sorbara:** Second, are you aware that in the US, where there is similar legislation, the major impetus for that legislation was to reduce the costs of social assistance borne by states and indeed, directly and indirectly, by the federal government? That is, in the US no high principles of, "We're going to change the dynamic of how people feel about this," was put forward as the public policy underpinning, but they wanted to cut down on welfare costs, because men were getting welfare and keeping it all and not honouring their support obligations. Are you aware of that?

**Ms Pilcow:** I am certainly aware that was one of the things that led the legislators in the United States to come up with their income withholding scheme.

**Mr Sorbara:** Okay. Under the legislation you are proposing here, an automatic support order is filed with the branch. I want to know what happens under circumstances where you still have a backlog, you have received the support order and it is part of the delay and it sits there and is not opened for six months; therefore, the receiving spouse does not get the payment. Who is liable for the income that is not deducted that ought to have been deducted pursuant to this bill?

**Ms E. Mills:** That is slightly different. I thought you were talking about the current situation. Which situation were you referring to?

**Mr Sorbara:** Let me give you a little background. You have a six-month delay right now. Presumably, if you do not get the resources you need, you could have a six-month delay under this bill. That is to say, an order for automatic deduction is issued by the court and it does not actually get into the hands of one of your officials for six or eight months or a year. We are in a recession. We are in a depression. The Treasurer just gave some very bad news to municipalities and universities today. He may well give very bad news to you. You may be the subject of a clawback of several millions of dollars. You may not have the staff to enforce this. You may have a situation where you have an automatic deduction order and it is in a pile like this and you do not get to it for six months, so the spouse who was supposed to receive that money automatically does not get it. Who is liable? I realize that the spouse who is the debtor is supposed to be liable, but he might not have any money other than that paycheque. Who is liable?

**Ms Pilcow:** Until such time as the deductions are made from the paycheque—and this is the subject of an amendment, actually, that you have before you—the payer is obliged to make those payments voluntarily. If there is no money, the payer is still liable. The fact is that no one is going to pay it. But until the payments start to be deducted the payer will be responsible for making them directly to the SCOE office.

**Mr Sorbara:** Nevertheless, you are going to have a public relations campaign that says this is now going to happen automatically.

**Ms Pilcow:** That is true.

**Mr Sorbara:** Okay. Would you be prepared as policy advisers to the minister to ask the minister to submit the contents of that public relations campaign to this committee for its consideration prior to it being made a public relations campaign?

**Ms Pilcow:** We can certainly ask the minister and relay your request.

**Mr Sorbara:** But would you be prepared to advise that he do that?

**Ms Pilcow:** Advise that he—

**Mr Sorbara:** That he do that, that he submit the public relations campaign to this committee.

**Ms Pilcow:** No.

**Mr Sorbara:** Now why is that?

**Ms Pilcow:** I think we need to think about what you are asking.

**Mr Sorbara:** Well, there is a bunch of parliamentarians here who would like to see what you propose to tell the public about this bill before you actually tell the public about it. I know the ministry has to look at it. Let me put it this way. You certainly would not begin a public relations campaign without running it by the minister.

**Ms Pilcow:** Our advice to the government is a confidential matter and the government makes up its mind as to what it discloses and what it does not. I can certainly relay your request.

**Mr Sorbara:** Okay. I guess that is as far as we are going to get on that one.

My final two questions are these. First, in the research you have done about this moral, legal, social obligation to pay support, is it your view that the majority of men—I take it for these purposes that it is always men who are subject to the support order—

**Ms Pilcow:** Mostly.

**Mr Sorbara:** —that the majority of men do not now see that they have a social, moral and legal obligation to pay support notwithstanding the court order?

**Ms Pilcow:** What we know is that approximately 75% of people who are ordered to pay do not pay.

**Mr Sorbara:** Just to interject there. There are times when I get very nasty letters from my Visa account because I have not paid. Sometimes I have forgotten. Sometimes I do not have any money. Sometimes I am just mad as hell. If you ask them I would be a defaulter in your terms under those circumstances, but I know clearly that I

have a social, legal and moral obligation to pay and in fact I want to pay, I want to be in a position to pay. Is your view that most men feel they have a social, moral and legal obligation to pay and want to pay?

**Ms E. Mills:** I do not think we can give you a definitive answer. It is going to be a subjective answer, first, because I do not think we have statistics on why people are not paying.

**Mr Sorbara:** Do you not need those before you write this sort of bill?

**Ms E. Mills:** Hang on a minute. Subjectively, we can look at some of the cases, which will give you what I might call a bit of a trend analysis. In cases where we go after garnishment and where we have to go into default hearings, etc, you eventually get them paying but you have to take them to the point of where you force them. That says something to me about their willingness to recognize that as an obligation. I cannot tell you how many cases, but there are clearly a great number of cases, and in the advisory group in Ottawa that has recently formed made up of creditors and payers, when we were just down meeting with them in Ottawa, they are talking about those cases where, "We get them right up to the default hearing and he'll come in and pay up the arrears and he'll do it that day." But we are dealing with a number of cases where they do not do it until it comes to the edge, and you are either going to garnishee their wages or you are going to seize something.

That says to me that there is an ability there. I do not have all the statistics to track it, but it says to me there is a resistance, that is, either not accepting the moral, the social or the legal obligation. We do not have the same research in Ontario as the statistics being referred to in Alberta.

It is a subjective judgement. I have seen it enough in the month I have been here, the letters coming in where they are saying, "Yes, he just paid up the arrears." In one case in particular last week: "Now it is 1 February. Where are we again? I don't have the payment." We say, "Yes, we don't have the payment." It goes the cycle until we force it.

**Mr Sorbara:** I think one of the things we asked for last Thursday was an analysis of how many of that type of case there is as compared to the total number of support orders issued.

**Ms E. Mills:** I know. We are looking at it, but our computer system, as you can imagine, is detailed enough keeping track of payments coming in and payments going out and status of action on the case. It does not give the profile data that you are after. You can only draw some correlations between where you have instituted the garnishment and then it is taken off, etc. I do not think we can give you those statistics, but we are looking at it.

**Mr Sorbara:** Can you not appreciate our problem?

**Ms E. Mills:** Yes.

**Mr Sorbara:** This matter has been under consideration by governments in Ontario for over a year. The former Attorney General said, "We need to do this because it's the only way SCOE can operate efficiently." He did not make speeches about legal, moral and social obligations

and creating a new dynamic. He said, to me personally: "The system won't work well unless we do this. It's too cumbersome. Garnishments don't work well. We need automatic deduction."

He also wanted a system, I tell my New Democratic friends, of getting people out—kickout, he called it—when it was working well. The new government has chosen not to put that in and that is up to it.

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But surely if this thing has been under consideration for a year, a government that wanted to market this to a Legislature would have statistics about how many real problem cases we are having. Surely the real issue of poverty is men and women who do not have enough money. They do not have steady jobs, they are on welfare, and, superimposed on that, the anger and anguish of separation. You are asking us to approve this intervention into the lives of individuals without any real data. The government of Ontario is not short of money to do this kind of research and I plead with you, before we get to third reading, to actually do the research.

**Ms Feldman:** If I might, the support enforcement agency is just that. Its mandate is to enforce, and what it enforces is the subsisting support order made between the party. If the parties have changes of circumstances, this bill does not purport in any way to change the way things have always been, how people can get changes in the underlying support order, how people can rescind arrears if, for whatever reason, a person is unable and convinces a court that he is unable to pay those arrears. This is an enforcement mechanism support deduction. It is a tool for enforcement.

**Mr Sorbara:** I agree with you.

**Ms Feldman:** In so far as that is concerned, bearing in mind that the parties can agree—they may not return to court but can agree if need be—that there should be a rescission of all or part of the arrears or that there should be a change depending on their changes of circumstances, the fact that 75% of the orders filed with the program are not in full compliance is a very strong statement, quite apart from whatever statistics may or may not be available in Ontario, simply because the parties themselves can return and settle their affairs vis-à-vis what the support order purports to do between themselves.

**Mr Sorbara:** Okay, let's get to that, then. You are saying that in 75% of the cases there is not full compliance. I am one of those, if you transpose it into paying other bills that you have a moral, social and legal obligation to pay. After this program is in place two years, that is, after you have the right to deduct from everyone's salary, what percentage do you project is going to be in full compliance? You are going to move from 75% down to what per cent?

**Ms E. Mills:** I think the minister answered that; he gave it to you in reverse. He said that at the moment 25% is in full compliance and roughly 35% has some moneys flowing. He would hope to see that category of moneys flowing to move to 60% and may even hope that that 60% would also mean full compliance, which means he is moving



that up to in the neighbourhood of 50% to 60%. Therefore, the 75% is moving down to 35% or 40%.

**Mr Sorbara:** So you expect to have within two years only 40% of the cases—

**Ms E. Mills:** Between 35% to 40% of the cases.

**Mr Sorbara:** —that are not in full compliance, and you are going to report to us in two years on that.

**Mr Carr:** He just sat here and told us he does not even know the reason they are not complying, but when this program comes in it is going to change it up to 60%. He sat here and said: "I don't know the reason they are not complying. I couldn't tell you the reason." Yet this program comes in and he says it will go up to 60%.

**Ms E. Mills:** We are giving you some indication. As I said, I think part of it—it is a subjective judgement, granted—is that at the moment the payment happens when those actions are taken to force them to pay. This system is removing that, the forcing them to pay is happening up front as opposed to making them go through the various steps. Also, the various steps we go through have to be instituted again. After you go through the first step and manage to get him or her to pay up arrears, they do not pick up on the periodic payments again. It has to go through a cycle; in a certain number of days our system kicks it out and we start all over again. This is not providing a continuous flow of moneys to the creditor. The support deduction hopefully will address those who are not paying just because they are waiting till the system catches up with them, much like the parking fines.

**Mr Sorbara:** Except that this directly contradicts what the minister said.

**Ms E. Mills:** I do not think so.

**Mr Carr:** He said one of the reasons he is doing it is because 75% of the people do not pay.

**Ms E. Mills:** I know. They do not pay.

**Mr Sorbara:** What the minister said was that garnishment is real easy. He said we can garnish very easily. Garnishment is basically the same thing as an automatic deduction order except that it has a stigma to it, and we want to get rid of the stigma.

**Ms Pilcow:** There are two things. Garnishment is very similar, and doing garnishment is not substantially more difficult than doing a support deduction. The very big difference is that the payer is before the court and the information is before the court. You do not have to wait until there is a default, until arrears have collected—

**Mr Sorbara:** I hear you.

**Ms Pilcow:** —and then chase after and find him. What this will do is give you the information upfront, when the debtor is there; it also prevents that person from going into default for so long as he is employed, which right now is a problem.

**Mr Sorbara:** My point is, the thing that you are really eliminating is the administrative cost of waiting for a default and then going through a garnishment proceeding. You have all the information there. You can lodge the

order right away. This is going to solve a great number of administrative problems in the branch. Am I right or not?

**Ms Pilcow:** Yes, you are right. It will increase compliance as a result of that.

**Mr Sorbara:** That is what the former Attorney General said and I think that is fine. I hope that in this committee we can fine-tune it. I just object to some of the rhetoric about child poverty, because the rhetoric about child poverty is about jobs and incomes and a whole bunch of other things in our society.

My final question relates to that very issue. Would you, as a policy adviser, be prepared to recommend the very same thing in a family—husband, wife, children—where the husband is making all the money and he is not giving enough to the wife and the children for their support? The same thing can happen in a family. I can take a paycheque home and spend it all on myself and my wife says, "I don't have enough."

**Ms E. Mills:** That is beyond the parameters of this legislation and this program.

**Mr Sorbara:** It is not beyond the parameters of the policy advisers of the minister.

**Ms Pilcow:** In fact, either party is entitled to go and apply for support during the currency of the marriage under the Family Law Act.

**Ms Feldman:** Without separation.

**Mr Sorbara:** Yes.

**Ms Pilcow:** So that is currently available. We do not need to amend any legislation to enable that.

**Mr Sorbara:** And those orders would be enforceable under SCOE, is that right?

**Ms Feldman:** They would be support orders which would be enforceable under SCOE, yes.

**Mr Sorbara:** Okay.

**Mrs Cunningham:** I guess I am going to go back to the reason we are here. We are here for public hearings and hopefully to improve the legislation. Although we have heard from the administrative staff who have been involved, I expect that we are going to hear from people none of us has had the opportunity to hear from before, who may in fact have more expertise than most of us, at least on the practicalities of the real world.

I say this as a person who has worked out there in the field and whose constituency office has been very active in the last three years. In fact, we have kept some records of both this and—no one in this room will be surprised—the Workers' Compensation Board people.

We know why they are there, how many times they have been there, and in many instances we know why they are not paying. Most of the people who come into my office who are not paying are not paying because they have not got any money or they are between jobs or they are in and out of the country. It is not a simple solution and most of the people who come into my office are paying something.

I do not know where they fit into the statistics. I guess they are a part of the 75% who pay something. They come in and they are very unhappy. They have not got the physical

strength to keep going back to have their orders changed, nor do they have the knowhow to get through the system, and that is why they come to me.

I am thinking, when I spend my time down here, there seems to be so little time. If you take a look at four or five years to change things, it sounds like a great deal of time; but it just is not. If I had to fix something first, my bias is I would get out there and help with the access system, help with it in any way I can and make this part of it. But that is not what we are doing. I hope we will be able to finish this by the end of the week and will be able to make the kinds of amendments so that we can give it a chance and measure what is happening, for a change, even within the offices so we can fix them.

I hope what we are not doing here, in trying to fix this system, is making more legislation and not helping the people who have to enforce it, because if we do not give them the support to do the work, the law is no good at all. So you cannot do one without the other and I will be here to remind the minister down the road.

I have a great deal of objection to the use of the word "debtor." If somebody is sitting around here, the government hopefully can come forth with a new word.

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**Mr Elston:** They have changed that.

**Mrs Cunningham:** They have changed it? Great. I did not read the amendments. I had no intention of reading them until this evening. If they have done it, great. That means they have been listening. Nice to see it before we get in public. But my point is that if we come up with the same people we have not heard before giving us some good suggestions for improvement, I want to see that happen. I am just advising you of my bias based on past experiences. I do not want to be rushed into making good law.

**Mr Wessenger:** I would just like to comment on some of the prior comments made. First of all, with respect to the reasons for non-payment of support, I think it is clear that the failure to recognize the obligation is a major factor. I have done some family law practice during my period and I also have had consultations with many members of the family law bar. There is a clear subjective view in members of the bar that the failure to recognize the obligation is a major factor.

As far as statistical studies go, sometimes they only prove what is the obvious, what you have already learned from consultations, so I do not really think statistical studies would particularly add that much in this case.

On the second aspect I would say that with respect to the question of non-payment, it is often used as a weapon, as we have known with respect to the difficulties between the parties.

The third aspect, of course, is the inability to pay. If we look at the Alberta statistics, when they say that 80% of payers have the ability to pay, that would indicate that the figure based on inability to pay would be around 20%. So if we are looking for a 60% pay figure, then we are really saying that those who could come under this type of program, the regular people receiving wages or salary, is 60% that we feel we can collect from. The others probably are

those in the situation of refusing to pay, where they are self-employed, where they are using devices to avoid. That is where, of course, hopefully the new program will be able to even raise it above the 60% by having resources concentrated on that enforcement.

The other thing I would like to comment on is the whole question of an ad campaign. I do not think we can consider submitting an advertising campaign or the proposed structure of it until the bill is passed, so we know the contents of what we are going to advertise.

**Mr Elston:** Oh, I think we have a pretty good idea of what is going to be there. Great place to pick up, actually. I want to talk for a second on the advertising, just to pick up on where the previous speaker was. Have you determined at all what type of message will come out? Is this going to be one of those heavy, negative-type campaigns?

**Ms E. Mills:** It has not been finally determined at all, Mr Elston, honestly. I am new but, I am seeing the various approaches that are being considered and not one or two have been nailed down at this stage.

**Mr Elston:** But you probably are running the options all the way from a pretty negative piece of work that says, "If you do not pay up, you are going to get it," or something that would be called soft-sell, which would be, "You have an obligation da-de-da-de-da."

**Ms E. Mills:** First, you have to remember there is a difference between public awareness, public education and then specifically a campaign targeted to try to actually change people's behaviour. I think the initial steps are going to be around public awareness and public education, of the magnitude of the problem as it exists at the moment.

**Mr Elston:** Something similar in that case to the type of advertising about wife assault, for instance?

**Ms E. Mills:** Yes.

**Mr Elston:** Yes, which I think is under your category. It would be described as public awareness, would it not?

**Ms E. Mills:** Public awareness and public education. That is the initial—

**Mr Elston:** So you would consider perhaps something along those lines.

**Ms E. Mills:** Yes, at first to get the magnitude of the problem—

**Mr Elston:** That is the type of advertising.

**Ms E. Mills:** —the number of defaulters, the impact it has on society, the impact non-support has on the children and the barriers that puts to their potential, if not to their basic needs. I think those will be the initial themes of the public awareness. There will have to be specifics if you can call it an ad campaign that would deal with the employers and what this means to them. But as I said, that is the general—

**Mr Elston:** Something along the lines of Bill 162 advertising about that or a checkoff or something for employer health tax, which is really just the mechanics behind it, right?

**Ms E. Mills:** Yes, so there will be a portion of it geared to employers.



**Mr Elston:** I presume you are probably quite familiar with the Wisconsin efforts. I understand they have done some public awareness campaigns. Can you get us copies of any of that? Is that possible?

**Ms E. Mills:** That is a little before my time. Maybe the policy people can respond to that.

**Ms Pilcow:** We have some.

**Mr Elston:** If you have some of that, it would be interesting just for our purposes to see the type of material you will be considering.

**Ms E. Mills:** We do have as well the state of Florida. We have a video that you can see. They have just embarked upon a campaign.

**Mr Elston:** Perhaps we could ask for the video after hours or something. I do not want to take up the time of the committee necessarily.

**Mr Sorbara:** Why does it have to be after hours?

**Mr Elston:** Basically it has to be after hours because we have too many people coming in and I think we should do our homework outside.

**Ms E. Mills:** For instance, it is one that has moved from the heavy, as you called it, to the more positive side.

**Mr Elston:** Okay. That would be helpful.

**The Chair:** That is an excellent suggestion. Perhaps you can have someone available for consultations.

**Mr Elston:** Maybe sort of after 6 or after we finish with witnesses one night we could do it.

**Mrs Cunningham:** Some of us get up before 10 in the morning.

**Mr Elston:** I do not know who you are because I have not seen you coming in when I come into the office, but anyway that is another problem.

Can I deal with the issue of research studies? The only paragraph on page 7 of the prepared text of the Attorney General indicates research studies on the issue of support default are most revealing. Then you go on to talk about the Alberta study which says 80%. Can you give us first the Alberta study, and second of all, could you provide us with the other studies which have come together to create this first opening line in the paragraph? I think, Ms Pilcow, you probably put this together.

**Ms Pilcow:** I did not, in fact, but the Alberta study, is one that is referred to in a paper that was written by Freda Steel on maintenance in Canada, I think. We do not actually have a copy of that study. We have a reference to it in another paper. You can see the reference to it in that paper. We can get you that paper if you like.

**Mr Elston:** But you have not actually seen the study yourself to see how it determined 80%?

**Ms Pilcow:** No.

**Mr Elston:** What about the other research studies that you talked about here, or at least the Attorney General was asked to speak of? Can you tell us which studies those are?

**Ms Pilcow:** No, I cannot, actually; but I can think about that and get an answer to you. I really do not know. I did not write this.

**Mr Elston:** Can you also tell us what your thoughts are as a policy adviser? The policy department probably constructs this and someone in your department probably knows about this stuff, I take it, Ms Pilcow. Can you tell us whether your thoughts would lead you to believe that in Ontario our figure is exactly 80% as in Alberta, or if it is lower, or if it is higher?

**Ms Pilcow:** I have no reason to believe that it would be any different. One would think that it would be roughly the same, but I really have nothing to—

**Mr Elston:** You suspect, though, that there are studies which would correspond to this in Ontario?

**Ms Pilcow:** I have no idea if there are any studies. If there were any I would like to be aware of them.

**Mr Elston:** They should have been set out here to identify the Ontario situation if they existed, you mean?

**Ms Pilcow:** I would have thought so. I am certainly not personally aware of any studies in Ontario on this point.

**Mr Elston:** Okay. So on the research studies you will get back to us. Can you talk to us just a wee bit about the idea of enforcement which suggests that the person who for whatever reason is not paying his/her money to his/her spouse at the current time should be subject to paying \$10,000 as a punishment to the government of Ontario or, failing that, be incarcerated by the government so he/she cannot make money to pay to his/her spouse? Can you tell us the discussions from a policy standpoint around telling people, "You are going to be paying the government \$10,000 if you do not pay your kid and your wife or former spouse \$200 a week," or whatever it is?

**Ms Pilcow:** First of all, it is up to—

**Mr Elston:** Oh, I understand that. But the \$10,000 is the key because you want people to sit up and take notice, presumably, right?

**Ms Pilcow:** That is true.

**Mr Elston:** Because this is punitive, and who is it punishing, I guess, is really my question.

**Ms Pilcow:** The difficulty is that if we have provisions requiring people to do certain things in the legislation and then have no way of enforcing those, they are really of no help to us. Certainly in my experience, from what I have seen, courts tend to be quite lax in situations like this where a payer could have defaulted on numerous occasions, and all that happens is that he continually comes back on a default hearing time after time. The intention here is to allow the court in situations where it is clear that the payer knew what he had to do and did not do it, to do it. Now my experience is that the payers are very infrequently fined or jailed in situations like that for that very reason.

**Mr Elston:** But it really is a bit of an illusion in terms of a provision.

**Ms Pilcow:** No.

**Mr Elston:** You will probably never use this as an enforcement tool—

**Ms Pilcow:** I do not think so.

**Mr Elston:** —and it will never be given—oh, so you expect it to be used?

**Ms Pilcow:** We expect it to be used in a situation where somebody can afford it and in a situation where that is the only way that you can possibly enforce the order. I think the courts will use it and we hope that they will.

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**Ms Feldman:** What would generally happen, Mr Elston, in practice, I think, is that the courts on one of these offence or prosecutorial visits to the court under sections 12a or 12b might do an order that the person perform the obligation that he is there for failing to perform. First, within a certain number of days and only after that condition, if it is not fulfilled, will they consider whether a fine, or in the worst cases a jail term, is appropriate.

**Mr Elston:** But in any case if the person actually goes to jail or has to pay \$10,000, you are defeating, really, the single, foremost goal of this legislation which is to get the money out of the person who has defaulted, right?

**Ms Pilcow:** Except if you are not getting the money in any event, perhaps it is the only way to do it.

**Mr Elston:** Throw them in jail. Okay. I want to go back to the 75% not in full compliance, because that really is troubling. I know Mr Sorbara has mentioned it, and Mr Carr has as well, and actually Mr Mills raised the issue about the 75% rotating.

I know you do not have a lot of stats out here, but when you say 75% are not in compliance, it can be read as though three out of four are just not paying. Can you sort of quantify for us in a range the number of people who may owe from \$1 to \$500 or \$500 to \$2,000 or something? I practised law very little, and it is now almost 10 years since I did any sustained practise at all in the Unified Family Court, but it is my sense that often we were talking about people who were defaulting on \$5-a-week things, very small payments, because the judges, when they made the order, may very well have been tempted to say, "He cannot pay, but you have got to hold it open"—that type of stuff, so you say \$5.

Those people do not pay any of the \$5 and they are part of the defaulting debtor crew that comes back. Then there is a group of people who sort of agree, or have a consent order, and then they fly away and do not bother paying. Those are the people who are really the worst offenders, I guess. They say, "I will do whatever it takes to get out of here in one piece," and they go and they leave.

Can you tell us the magnitude of default we are talking about under the 75%?

**Ms Pilcow:** I wonder if I could just make a preliminary remark and Ellen Mary can tell you about some of the statistics. The difficulty is that the program is charged with the responsibility of enforcing orders and there is no enforcement agency that can look at an order and say, "Should this one be enforced or not?" This is the kind that really—

**Mr Elston:** No, I am not asking that; I am just talking about the construction of some of the orders made by

judges. You have no control over that, I appreciate that fully, but I am just looking at the magnitude.

**Ms Feldman:** It is also only one side of the equation. If somebody is \$1 to \$500 in default or \$500 to \$1,000, of course we do not know—well, we cannot say, if we give you those statistics, how much the other person's expenses are, what it means to the recipient, so it is—

**Mr Elston:** But the other part is, you said that if there is a change to be made, then an application can be made, either to pay less or to pay more, by each of the parties, and you have no control over that. I appreciate that side of it and I fully appreciate that even when an order is made, it may not sustain the receiving person. It is not that. I just want to understand the magnitude of these 75% not in full compliance.

**Ms Feldman:** Somebody who is \$500 in default could be in default for 10 years. Somebody who is \$250 in default could be in default for 10 years. There are so many variables.

**Mr Elston:** Or for one week.

**Ms Feldman:** Exactly.

**Mr Elston:** I understand that. I can appreciate what the stats will tell us. I just want to know the magnitude, because if there is a \$250 outstanding default from a person from five years ago, but the person now is paying \$400 a week, it is a different statistic, but I want to understand.

**The Chair:** Do you have a specific question about those? I am wondering, do you have the answers available?

**Ms E. Mills:** We do not have the information here and I am not even sure if we will be able to give it to Mr Elston. I will go back and see if we can do a run, but I do not know if we can do a run that tells you of those defaulting. These numbers have orders that fall less than a thousand. These are periodic payments. These fall into this category. We may be able to tell you of those in arrears because we were looking at the amounts in arrears and we may be able to tell you some relative breakdowns of those in arrears in terms of magnitude of dollars, but I do not think we have the first, which is breaking up the—

**Mr Elston:** I appreciate that, and if that is the best you can do, that is fine.

**The Chair:** There is a lot that will be useful too, will it not?

**Mr Elston:** Sure, I think that is right, Mr Chair. The other interesting item about your process here as it is brought forward to us is that as I indicated earlier, by consent people can make arrangements as it now stands; they can make arrangements to vary their orders. Once this bill is in place, the only way that the enforcement or the automatic deductibility of this payment can be altered will be by a visit to the courts—is that true?—and any payment which a person expects to be credited against his/her payments can only be credited if in fact it is arranged through the courts?

**Ms Pilcow:** I missed that.

**Mr Elston:** Sometimes people make ex gratia payments almost. They sort of say: "Listen, it's holidays, you



know. The kids need some shoes. Can you help me out?" and: "Yeah, okay, I'll do that, but is it okay if I decrease next month's? I'll give you a little bit extra this month for next month." Some people actually do that, but in this situation, that type of informality is not possible. I would have a client in that case who would be in arrears, in fact in default, if he made an arrangement something like that.

**Ms Pilcow:** That is a problem even now, because all payments flow through the program and that actually causes a lot of difficulty for people.

**Mr Elston:** I actually had a case where that was the problem—not a legal case, but a constituent case.

**Ms Pilcow:** It is difficult for everyone in those circumstances because you certainly want to encourage people to make those kinds of payments if they are going to, but no enforcement agency can operate by asking every month, "Did he make the payment on his own?"

**Mr Elston:** So really that type of coming together of the spouses, a reconciliation not inside the marriage but a reconciliation of the two people living separate and apart yet having the moral and legal and social obligation to make those sorts of arrangements, cannot be credited inside this system, which is highly bureaucratic obviously, which it just has to be. As a result, this becomes an instrument that will militate against that kind of coming together, against the social and moral resolution of disputes as between the two parties. Is that not right?

**Ms Pilcow:** I agree that it would militate against people making payments outside. As to whether it militates against a social and moral responsibility, I am not sure that it leads to that conclusion.

**Mr Elston:** Well, sometimes I have had people who have come in and said: "Listen, we paid early. Here is the receipt in hand for my spouse, and it is okay by us. I don't have to send the stuff in next month. You make sure you send it on to her lawyer just so that he knows." All that stuff is by the board and if the spouse wants to have an advance payment, it will not and cannot happen unless he gets permission from the courts and the filing of an order that will allow your people to not raise the issue with the payer.

**Ms Pilcow:** That is no different, though, from what the system is now, because the payments flow through the program.

**Mr Elston:** Oh, I understand.

**Ms Pilcow:** The only difficulty is that, the way the system is now, the payer can choose not to make the payment.

**Mr Elston:** But the other difference is that at the moment I can file an agreement on behalf of a client and not ask it to be enforced. In fact, we can still be informal, we can still have a resolution so-called informally, even if it is done formally between legal offices on behalf of clients. As soon as this is in, that is all out the door.

**The Chair:** Could you give us an indication of how many more questions you have, Mr Elston?

**Mr Elston:** I have about three or four more topics, but I will try to be quick. I have been trying to be quick.

**Ms Pilcow:** Once the order has been made, it is true that they cannot make those arrangements. Parties can choose to enter into a domestic contract in the initial stage, but that is once the order has been made.

**Mr Elston:** So it will probably be done with difficulty. The question now for me is this: A person who wishes to make an application to the court to vary an order will pay roughly how much; do you know?

**Ms Pilcow:** A rough guess based on my experience would be \$3,000 for a whole application. If it had to be actually heard through to a—

**Ms Feldman:** It really depends on what region you are bringing the application in as well.

**Mr Elston:** Let's say it is simply done through family court; let us not try and vary decrees nisi or absolute or anything like that. Let's just say it is a family court matter up in good old Walkerton, which I happen to know; Judge MacKenzie sits there. Let's say a client comes to me and says: "I have lost my job. I don't know whether I can pay or not, but I have given my spouse an extra couple of months here because it is time for summer and the kids are heading off here and there. I've given her half the deposit towards the camp they used to go to. Elston, you go and apply so that I can have the order varied." I am going to tell him probably, let's say, \$1,000, right?

**Ms Pilcow:** I do not see that being a situation where someone would go and vary his support order.

**Mr Elston:** He is going to be in default and you are going to chase the living daylight out of him.

**Ms Pilcow:** I think your earlier comment was more accurate, that people just cannot do that. They cannot make side arrangements and have support deduction in place. I think that is so, and if they choose to do that, the cost would far exceed any benefit to any of the parties.

1630

**Mr Elston:** I actually had a constituent who called me, his problem being this. He was making the payments directly through your organization. When I say your organization, it was not even Ellen Mary Mills at that point either, but he made the payment through SCOE. He made the payments on time but his spouse did not receive them on time. She did not have enough money for rent so she was completely undone by all this. The landlord was a little bit pushy so the gentleman went over and paid the landlord to get him off his former spouse's back and leave her and the children alone. He then phoned to try to straighten this out with your organization and was told: "You don't have anything to say and, by the way, how long it takes for us to pay it out is our business. That is our money." It was a pretty gruesome and aggressive piece of work. All he had done was, he had paid the rent to take the person out of it.

Basically, what places this into a problem type of system is now that type of payment made will penalize him and in fact will penalize his former spouse and children in a way which we cannot recoup. Is there any way that you can see that we can soften this legislation that would allow some of that, where there is obviously goodwill, where

they obviously have agreed that there is a legal, moral and social responsibility to do that kind of thing and—

**Mr Sorbara:** They do not need the advertising campaign.

**Mr Elston:** Yes, and what is more, the family does not need any of that stuff. What they need is the help, and the person has responded, so we are really going to penalize him.

**Ms E. Mills:** I just want to make a couple of comments. I think what you are addressing, first of all, is even the first act and not this bill when you are—

**Mr Elston:** Oh, sure. I agree. No question.

**Ms E. Mills:** —and the issue of whether the payments need to be made through the agency. Someone asked the minister when he was here what has been the dropoff in service that has occurred with the increase in case load.

**Mr Elston:** It was actually me.

**Ms E. Mills:** Okay, I think you are alluding to one of the fallout items of not having the resources there to be able to deal with the current case load and so perhaps the payments have not flowed as quickly as they should.

I think, even before my arrival, the program has looked at some measures to see that that is minimized to the extent we can, and clearly that will be looked at whether the new bill comes into place or not. There is a lot of administrative streamlining that has to be done to make sure that the current program does not become a hindrance but more what it was intended to do, so we have to look at things that deal with the delays.

Again, it is only one thing we are looking at, but we are looking at whether, as opposed to mailing cheques to the creditors, we can do the electronic transfer of funds. But that too is fraught with a whole host of difficulties: whether it should be mandatory or voluntary, whether all creditors have bank accounts etc. We will be looking at wherever we can to make sure we minimize the delay to the extent possible just in the basic—

**Mr Elston:** That is a particularly difficult situation, electronic wiring of funds, just because, as you noted, there may be creditors with attachments on account. You are a very brave person, I might add. As I said Thursday, this is a tremendously difficult problem, just a practical problem in trying to get this money where it is supposed to be.

I want to move quite quickly, Mr Chair, because I know there are other people, but I want to ask about the \$12 million that has been found now and returned to the Treasury. This is the type of money that the Treasurer likes because he pays it out, credits it over here and then it comes back on the other side and he keeps it. Right?

**Mr Carr:** He has already spent it.

**Mr Elston:** Yes, he spends it once but he gets it back the same year, and he keeps it and he hides it away and he can pay it off to little favourite programs somewhere, usually not Community and Social Services and usually not the Ministry of the Attorney General. In fact, as I recall, the Attorney General's ministry was always trying to find a way to stake itself a wee bit of extra of this so it could get some people in place to enforce it even better.

**The Chair:** Do you have a question?

**Mr Elston:** What is your new estimate with this bill?

**Ms E. Mills:** We will have copies of this for you tomorrow, as I said. It is really the material that was prepared for the estimates review, and this is 1990-91. Cumulatively, since the program began in 1987, we expect by the end of this fiscal year to have brought in in the neighbourhood of \$314 million to be returned to the Treasurer. We have three years of actuals here and one year of forecast, so that the actual at the end of 1989-90 was \$206 million and we are looking that in this fiscal year of 1990-91—

**Mr Elston:** So what in the world is this \$12 million per year to the three years?

**Ms E. Mills:** Well, they have averaged it. They have taken what is expected over the cumulative period and they have then said, "Okay, on average." The first year was \$19.9 million and the next year was about \$102 million as we go cumulatively, and I think they have just averaged it.

**Mr Elston:** So you are looking at then under the auspices of the new bill—

**Ms E. Mills:** This was the current bill.

**Mr Elston:** Yes. That is current. With this one?

**Ms E. Mills:** Again, you see, it is like a circle. There are these pockets of cases and they overlap. If you take what I said before, we got 83,000 cases and 27% of those are assigned. I do not know how many of the default will fall in the assigned and how many—

**Mr Elston:** So we have a maximum of 27% of the cases that you can aspire to, that you will be recovering on.

**Ms E. Mills:** Hopefully, yes.

**Mr Elston:** Okay. But no information.

I had an interest in following up on the stuff in the United States on page 9, just for people who are following along with me, and I have some other things but I will stop after this. The suggestion on page 9 is that, as is always the case, Ontario ought to do this because other places have done it, and really we are not being too farsighted if we refuse to go along with things that have happened in Australia and places that are so socially responsible as the United States of America. We want to always follow along. John Crosbie and Howard Hampton now are of sort of a feather, I guess.

Interjection.

**Mr Elston:** That is unfair to Howard, I agree. That is being provocative, but when you use a paragraph that sets it up as though, you know, how can you refuse to do something that they have done in the states—

**Mr Sorbara:** After all, Wisconsin did it.

**Mr Elston:** Basically, I want to know—it says, "The United States has passed legislation requiring support deduction for all support orders." Are you saying this is the federal—

**Ms Pilcow:** Federal legislation.



**Mr Elston:** And is it passed on the basis that they will require this legislation if there are resources to be obtained from the federal authorities?

**Ms Pilcow:** There is a cost-sharing arrangement between the federal government and the states, and what they have done is—

**Mr Elston:** This is like the old Canadian federal tool which was, “If you don’t do it, you are not going to get the dough to support it.” Right?

**Mr Sorbara:** It is welfare moneys that are being withheld, I think.

**Ms Pilcow:** They have no option but to do it.

**Mr Elston:** Sure. So that it why we are going then by 1994.

**Ms Pilcow:** In fact, by November 1990 each of the states was required to enact legislation for immediate income withholding for those cases being enforced by the state child support agency. Now in fact some of them have not done it, even though they are required to do it, and 1994 is the date for all orders, not only those that are being enforced by the child support agency.

**Mr Elston:** Can you give us some of the states that have led the way in that—I know Wisconsin has already been mentioned and Florida, I guess, in terms of the advertisements that we will take a look at later—some of the ones that have also implemented that?

**Ms Pilcow:** There are quite a number of them I can give you. I do not have that with me now.

**Mr Elston:** Maybe you had better give us the ones that have not. That would help us because it would show us a little bit about those, but I presume that states like California, New York and Michigan would probably have proceeded to put this legislation in place.

**Ms Pilcow:** Frankly, I cannot remember off the top of my head. Some of them have done it in advance of the dates required by the federal legislation; some of them have not done it yet.

**Mr Elston:** Is it possible, having seen that they have moved to do this, at least in some places, that we could get some preliminary statistics as to the before and after to see whether they really were able to affect positively the number of defaulters?

**Ms Pilcow:** We have some. Wisconsin has had what is called “immediate income withholding” in place since 1983 on a pilot project basis. They have some preliminary findings. The problem with them is that none of their studies are pure analysis of support deduction because they have done a number of things alongside of support deduction which have really tainted their numbers.

They have tried to compare counties where they did not have support deduction to counties where they did, and what they found was that, even in the counties where they did not have support deduction in place, judges were doing it in any event, so that the studies really are not accurate according to the people who have even done them. But what they tend to show is an increase of somewhere between 15% and 30%. This is one study in Wisconsin. I am not aware of any others that have been done.

**Mr Elston:** Just to finish that line off, could you give us, for instance, from Wisconsin and Florida, just as a couple, the number of people that they have working and the case load that they are experiencing? They must have surely that basic data.

**Ms Pilcow:** We have the numbers for Wisconsin. We have them for Georgia, I think, as well. I do not think we have them for Florida.

**Mr Elston:** Okay, Georgia. Can you give us a sampling of states which might be helpful in terms of the amount of resources that they have put against that type of legislation to see how they respond? Maybe even Australia has something, I do not know. But it is important, because their experience will instruct us as to how far we will have to go in putting together the resources. I know that Ms Mills will find this very helpful in the long run, and it may make the difference between a system which is going to languish and a system which will perform.

01640

**Ms Pilcow:** I wonder if I can just comment on the last point that you made. The problem with comparing some of these enforcement agencies with our own is that they do a lot of different things. For example, in Wisconsin their child support enforcement agencies are very involved in variations of orders, which we are not at all. So—

**Mr Elston:** So they would do custody stuff?

**Ms Pilcow:** No, variations of support orders. In fact I think they are all going to be required to do modifications by some date, I cannot recall which one. So they do a whole lot more—

**Mr Elston:** So in fact you could come to the court and say, “I will agree to pay, but my reason for not technically at the moment is this.”

Just one last and final point. I do not particularly want to put anybody on the spot to answer this one, but during my time as minister, and I expect also Mr Kwinter and Mr Sorbara, we were really harped on any time there was a broad regulation-making authority in a piece of legislation.

This bill has one of the broadest ever, and I realize the need to be rather flexible in allowing the people to go ahead and make regs, whatever they feel that they have to do without coming back to the Legislative Assembly. But the New Democrats, even the Conservatives on occasion but particularly the New Democrats, any time we had a bill that had a broad regulation-making authority that would actually require a semisubstantive part of the bill to be enshrined in regulation, raised a big, big problem with us. We always had to file the regulations before we ended up doing clause-by-clause on some of the bills. If we did not file the regulations, there was a big blowup: “Boy, you guys are really conspiring against legislative authority.”

There are two more things really; one is the first point, and I think that should be answered by the parliamentary assistant if the parliamentary assistant is able to talk to us some time, because I presume the Attorney General will not be, and that is not an issue which you can talk to me about.

The second is; have you got regulations that will fill in some of the blanks that you will be able to share with us

by the end of the week? Because if there are substantive parts of this legislation that are going to appear in terms of enforcement, even for this legislation, then we should know about it as we prepare to do the clause-by-clause.

If there are areas in which people are not prepared to share substantive parts of legislation but will remain hidden until the regs are done, then I can tell you that this party or at least this member of the party—I think this party—will proceed to raise some pretty strenuous objections and we will probably demand that the regulations be shared.

They should be shared with the committee to be sure that we are going to have substantial completion of our work before clause-by-clause. If it cannot be done, it should be done before third reading, and it may be then necessary for us to come back as a committee and review the regulations in the context of the reported bill that goes through to third reading in the House.

So if you have got some stuff on regs, it will be helpful to share it with us; if you have not got it, then I think we should probably as a committee have a sustained effort to get the draft regulations and make sure that we can semi-approve those before this bill is completed.

**Ms Pilcow:** On the regs question, I can tell you for sure that we will not have them completed by the end of the week. We do not have any of them drafted. We have a good sense of what is going to go in them, but nothing in particular. What we can try to do, if we have got the time to do it, depending on the other things we have got to do between now and clause-by-clause, is to get you some general sense of what is going in there.

**Mr Elston:** That would be helpful. It may be, when we see the general sense, that may be enough, or it may only lead to a few more questions when we do it clause-by-clause, because we may end up being uneasy or ill at ease with the way the provisions read except, when you put them in the context of the provision with the regs, it may help us.

**Ms Feldman:** I suppose this will not give the comfort that you are probably seeking, and other parties may have said this in the past, but we hope that we put all the substantive law in the bill itself. If you review the amendments, you will see that whatever we thought was not completely clear we have hoped to clarify by those amendments as well. But subject to that, we appreciate the concern you have raised.

**The Acting Chair (Mr Fletcher):** The fire alarms are going off in the building, but not on this side. We are not asked to evacuate the building yet.

**Mr Elston:** This side of the building burned down several decades ago so it is their turn.

**Ms S. Murdock:** Just an aside, first. I am a loather and detester of the central telephone system, and it is interesting to note that the two areas that use this system are now SCOE—hopefully, another name later—and the Workers' Compensation Board, and both of them are so well loved by the public. I just wanted to say that.

Listening to what everybody has said this afternoon, including myself, no matter what words are used, rhetoric or otherwise, I think part of our job is to get past the

rhetoric. Whether it is motherhood and love and kisses and all of that, the reality is: Will this bill do what we hope it will do; that is, clean up the SCOE situation?

Something that really was not emphasized today but is really important to note, that I think is really important based on the constituency work I did, is that it takes a lot of the personal aspect out of the orders. The payer cannot sit there and say, "Well, she's just getting even with me, so she's taking me to court again," or whatever. Correct me if I am wrong, but under this bill, first, the choice of whether the order is registered is out of the people's hands. Whether there is any variation is out of her hands; they cannot make deals. So there is no personal aspect to this, correct?

**Ms Pilcow:** That is true. That is one of the benefits of it.

**Ms S. Murdock:** That is how I see it. You cannot stop payment because you are angry with the spouse. It is the children who suffer. The spouse suffers too, but the children are the ones who are not getting the money.

**Ms Pilcow:** That is the flip side of Mr Elston's concern, that for those people who are able to agree and who are friendly and able to make their own arrangements, it is not a good thing. But for the majority of people that is not the situation, where they are making ex gratia payment. We are trying to deal with the people who are not.

**Ms S. Murdock:** In a seven-week period in Shelley's office we had 38 SCOE complaints. That is what initiated the Ombudsman thing. Of those 38, only two had to do with the federal interrelation of legislation. The rest were split evenly between Comsoc FBA cases and general maintenance payments.

It is interesting. I do not know whether this is considered, but I am hoping. I read all the legislation, everything we have been given so far. It says Comsoc can withdraw as long as there are no arrears, right? But is there any kind of relationship between payment—here is an example: The court order is \$200 per month per child; two children, \$400. FBA is \$718 per month. Because the court order is for \$400, FBA only pays \$318. But with all the delays in SCOE and so forth the mother and children do not get the money, and neither has the spouse paid.

It is like a waiting period before Comsoc comes in. This is out of your bailiwick in a sense, but it is not, either. Comsoc waits before it ends up giving an assignment for the \$400, and I am wondering whether or not any consideration has been made in the AG's office on that.

1650

**Ms Pilcow:** I am not sure I understand the question.

**Ms Feldman:** I understand: whether any consideration has been given to making the assignment between Comsoc and the recipient quicker, so that Comsoc pays the full \$718 a month rather than making the recipient do this with a shortfall until the assignment is actually made.

**Ms S. Murdock:** Right.

**Ms Feldman:** I am aware of no—not in this context of Bill 17—



**Ms S. Murdock:** You must have discussed Comsoc's relationship with SCOE legislation to have come up with the clauses that related to Comsoc being allowed to—

**Ms Feldman:** Only in so far as our interest—when I say that I mean strictly Bill 17 and the old SCOE legislation—starts after the support order has been assigned to Comsoc. What happens prior to that date, or any delay constituents might be experiencing in getting an assignment of the support order really has not come into play at all.

**Ms S. Murdock:** All court orders are going to be automatically registered under this bill.

**Ms Feldman:** All support orders made after July 1987 under the old legislation are automatically registered. They all have an operative clause requiring the filing with the director's office. The difference is that people can withdraw those support orders from the program.

**Ms Pilcow:** Are you talking about registered with the SCOE program or support-deductible?

**Ms S. Murdock:** Support deductions.

**Ms Pilcow:** Support deductions will only apply—actually, this is the subject of an amendment—where the support order itself provides for payment of support on a periodic basis.

**Ms S. Murdock:** Say that again?

**Ms Pilcow:** It is only where the court order itself provides for the payment of support on a periodic basis. If you have one lump sum payment of support, that is not support-deductible, but where there is a periodic payment, the court will be obliged to make a support deduction order in every case.

**Ms Feldman:** That lump sum payment is enforceable, but not through support deduction.

**Ms S. Murdock:** Okay. I know Mr Elston was talking about the cost of taking a case for a variation order, for instance, to court. If everything was amicable it would not be \$3,000, but nevertheless there is a cost. As it comes under your bailiwick as well, it is something that legal clinic might even be considering to look at. I had not even thought of that aspect, but it is a consideration, to make it so that the onus is not on the payer or the payee, as the case may be, if she or he wishes to take it and get a variation. There should be some way through our system to do that.

**Ms Pilcow:** If they do it on consent it can be very inexpensive. All you have to do is file a consent order. That is not the problem. The problem is where it is very hotly contested. If you have absolutely no money, legal aid will of course pay you, or if you go up to the limit.

**Ms S. Murdock:** I know. But even that is a pain.

**Mr Elston:** I do not want to butt in, but if you have any lawyer prepare an application, even on a consent, they are not going to take it for \$25 or anything. It is still a relatively expensive exercise, particularly for the person who is marginal and cannot even maintain their obligation.

**Ms S. Murdock:** I have agreed with your point. It is a valid point and something I think the ministry should be considering.

Last, and then I will quit, is that SCOE's attitude has been a real problem in terms of people calling, even when you did get through and talk to a human being—rude, really unacceptable, even when an MPP's office would call. After the Ombudsman's investigation, our office made a deal, at least locally; I do not know whether it has been applied provincially. For instance, no one would ever tell you their name. If I called about my case, I would talk to Suzy and Jane, because they all seemed to be women. I would be talking to all these people and each time would be a different person, so there was no continuity on a file. Plus the fact that they tended to give you next to no information and what information they did give you was not very pleasantly given.

One of my suggestions to the Ombudsman was that they should all go and take a course in how to treat the public. I am hoping that with this new bill, with the reduction of workloads that are to be expected, there will be a change in that too.

**Ms E. Mills:** I do not suppose you asked for a response.

**Ms S. Murdock:** No. A year from now I am going to ask you for a response.

**Mr Carr:** I want to agree with Mr Elston's comments about the regulations. I would suspect we are probably too soon into it to have any forms we would be looking at. If we are not even into the other, we are too far along for that, I would suspect.

**Ms Pilcow:** We were hoping to get them done, but because of the number of the comments we got on the second reading draft, we were working on amendments to those drafts as opposed to doing the forms and the regulations. That is why they are not done, but we want to do that.

**Mr Carr:** As much midnight oil as could be burned would be much appreciated by the members of the committee.

**Ms Pilcow:** It is burning.

**Mr Carr:** You do not look too tired.

I know it has been gone over a little, but in terms of this 75%, I was one of the ones who sat in the House and, honestly and truly, maybe being a naïve rookie, when the Attorney General said 75% were in default, I immediately thought they had been totally in default. Just to clarify it, you are saying you have not kept any statistics on those people. We are throwing out sometimes your guesstimates from family law of what they would be, we take the Alberta study and then that is it. Is that where we are at with statistics for this?

**Ms E. Mills:** Not exactly. I can get, as I told you, that 75% figure down to a 65% figure if we look at cases where, when we ask the system, there has been some money flowing in the last 35 days. The 25% system tells us where on an average it is full compliance. If you add where somebody has made a payment, maybe a lump-sum payment on arrears or whatever, that now takes it up to 35%, which still leaves that category, 65%, where there is no money flowing and therefore in default.

The only thing I can do to reduce that figure is look at some cases where the support order has been filed with us and the parties have not come forward and given us the information on a filing package so that we can do anything with it. They have not officially withdrawn from the program so we have to keep it on our books; there is some 16,000 in that category, which would take the per cent down a little. But on the remainder, I cannot give you a profile as to why they are defaulting. We just know there are no moneys flowing, and that tends to be the definition of default.

**Mr Carr:** On that also, how do you propose to go back into—for want of a better word—the system to clean up what is there now? Have you thought of how you are going to proceed along those lines?

**Ms E. Mills:** Yes. Some of the computer tools were not even there a year ago, and as of April this year we have a better case management system that allows us to look at our cases, when was the last action taken, etc. We are trying to move through our cases in a more systematic fashion. You heard the minister mention that there was a backlog a while ago on initial registrations. We are now trying to keep that current, so that there hopefully is not a backlog on the new ones coming in, while we look at all the other cases and systematically go through them.

At the same time, we instituted at the beginning of January what we call hot tips. With the inquiry lines there, if people call in and give us some information about their ex-spouse or payer, the central inquiry is immediately faxing that to the regional offices. We are trying to act on all those hot tips we can on a daily basis, as opposed to putting it in the file and when we got to that case. We are trying to reorder our priorities in terms of how we are dealing with the cases. Again, it is still a bit of a backlog in that not all cases have the attention they should have up to date.

**Mr Carr:** But you fully agree with trying to go back. It is not going to be like our court cases across the street, where we are going to throw cases out. You believe that we should go back to those. Because the Attorney General, when it comes to that case, says: "We should start fresh. Let's not go back into it because it'll just clog the system more." Do you think you have the capabilities to do it?

**Ms E. Mills:** The minister mentioned these resources. They are just coming on board. It will take till December 1991. The \$2 million he is talking about is allowing us to fund some extra staff on contract one time to try to get the current system a little more current.

1700

**Mr Carr:** So in December 1991 you will have that "backlog" cleaned up.

**Ms E. Mills:** That is the target. I do not want to make the guarantee, because there are a lot of factors effecting in there, but we are going to make a serious attempt.

**Mr Carr:** Are you confident as the director that \$2 million is enough to do that or do you have—

**Ms E. Mills:** I cannot say at this time whether I am confident. In a couple of more months, I might have a better reading.

**Mr Carr:** Because you know where we are at now. We are now talking about including back cases, yet we still really do not have, I would say, a concrete plan on how to do that. The committee is going to have to agree to take a look at these backlogs, and really the plan in place is not all that definite, is what you are saying.

**Ms E. Mills:** Yes.

**Mr Carr:** One last question, if I could. Maybe you could just run through the steps very simply, not take a lot of time, realizing it is 5 o'clock. I am an employer. I get a notice. How does it work?

**Ms E. Mills:** I am going to let the designers—

**Ms Pilcow:** The employer will get a copy of the notice from the SCOE office. They get served with a copy of the notice. They then are obliged to remit the payments. The notice will set out who gets the money, which is the office, and how much and from whom. They will also be given some information on what to do if. What if you are not the income source of the debtor? What if the payer is no longer employed or becomes unemployed during this period and simply has to pay? The employer is going to be obliged to comply only with the directions of the program, as opposed to with what the debtor may want to do.

**Mr Carr:** Is this going to be a file this thick for somebody coming through, or how simple is it?

**Ms Pilcow:** It is going to be the notice, with the amount of money and the period during which it has to be paid.

**Mr Carr:** Because what I am thinking—as you know, most people are in small businesses. General Motors has a payroll department, but I am thinking in the small businesses, where I am an owner-operator, is it going to be as simple as you are laying it out here, so that you can follow it?

**Ms Pilcow:** Our intention is to make it as user-friendly as possible. We have had a lot of offers of assistance from various employer groups to assist us in drafting the materials for the employers, and we will have an employer hotline for them to call and ask questions. Our intention is to make it as easy as we possibly can. I think we should be able to do that. I do not think that is an unrealistic goal.

**Mr Carr:** Plus the employer knows that if there is a mistake he gets a penalty, which is what again?

**Ms Pilcow:** It is not just if they make a mistake; it is if they knowingly contravene one of the provisions of the act. For example, they are obliged to advise of an interruption in payment. It is up to \$10,000.

**Mr Carr:** We appreciate that in a big company you can do that. In a small company somebody misses it and then all of a sudden gets hit with whatever. I did not follow it, and I am just worried about how that will work, knowing that a lot of these are going to be in small businesses. I just wondered what the planning was. How far down the road are we in planning for this with the businesses?

**Ms Feldman:** That is why the word "knowingly" is in there, that particular provision.



**Ms Pilcow:** The intention is also to give them some basic information when they come on board, to tell them, "These are your obligations; you should know that you have to—" and do a pamphlet for them setting out all the obligations they will have.

**Ms Feldman:** I think we are fortunate to have the type of consultation and input we have had from the employer groups to date and to hopefully be able to get their assistance on the preparation of forms they can live with and understand.

**Mr Carr:** I presume the groups that will be coming in over the next little while, which might not have been included when the Attorney General met, that information could be forwarded as part of this process.

**Mr Sorbara:** As long as we are putting in our requests for information, if the policy branch, in looking at the other jurisdictions it has compared, will compare the opt-out provisions in other jurisdictions as compared to the two opt-out provisions we have here under the bill as proposed. As I understand it, one is when it would be unconscionable—I cannot imagine where it would be unconscionable, but you said you put that in—and two, where there is agreement between the parties and security posted and the judge agrees as well.

**Ms Pilcow:** What the bill says is that the judge will agree upon what is an adequate amount of security, but what I said earlier was that we were proposing to change that to provide for a minimum amount plus security only in the form of cash, so the judge has less discretion.

**Mr Sorbara:** Suffice it to say that I view these provisions as very strict, and very few people will actually be able to opt out of the system.

So if we could take a variety of jurisdictions, say, five jurisdictions and compare the opt-out provisions, that will be helpful to us. As I said earlier, I think that is one of the main issues we are confronting.

The other thing I am concerned about a little bit is something that both Mr Carr and Mr Elston alluded to, and I think I did as well later on, and that is the figures, what the figures are going to look like down the road; that is, 100% or 90% compliance. In other words, the good guys. I hope that we are not going to make those figures look good by bringing into SCOE all of the people who are complying now outside of the system; that is, those who are able to opt out of the system by way of an agreement or those who are providing support under a domestic contract that is not the subject of an order.

Under your act, number one, those people who could mutually agree to leave the government out of this will not now be able to do that, absent security; and, number two, a domestic contract can be filed with SCOE under your bill, so that adds more people into the system.

If, as it turns out, you are improving your figures by way of bringing into the government-administered system a whole bunch of people who would have complied anyway, that would be a terrible fraud on the people of the province to say that we have really improved it, really improved the payout rate. "Look at our statistics, we're down to 40%." But you do not tell them that you have

done that by bringing in a whole bunch of people who would not be in under the law as it stands now. What measures are you going to put into place to ensure that that is not the case? Is there any way of doing that? Your record will look much better, would it not, if you could bring in?

**Ms Pilcow:** First off, domestic contracts will not be filed. First of all, you can file them now if you want to and you can file them with the new bill, so that is not really a change.

**Mr Sorbara:** Oh, I thought that was a change. I am sorry.

**Ms Pilcow:** The difference will be, those people who previously had an option to not file their support order with SCOE by filing a notice not to enforce will not have that option any more.

**Mr Sorbara:** That is right.

**Ms Pilcow:** Frankly, we do not have the numbers on how many people do that. We do not keep statistics on how many of those people there are.

**Mr Sorbara:** I think that should be so easy to get. The courts know how many orders are filed in the court. These, after all, are orders of the Supreme Court of Ontario or the Ontario family court or Ontario Court (General Division) now, and you know how many cases you have. So it seems like a simple subtraction—

**Ms Pilcow:** I am not sure, frankly, that the records that are kept by the courts break it down to isolate those cases that relate to a support order and those that relate to other relief under the Family Law Act. I can check that to see if we know that number, but we will not know—mind you, we might know, we might be able to tell how many. We can look at the numbers.

**Mr Sorbara:** Do you see what my problem is?

**Ms Pilcow:** I understand the problem.

**Mr Sorbara:** The problem is that you are going to be bringing in a whole bunch of people who are not now in.

**Ms Pilcow:** Potentially.

**Mr Sorbara:** I am separated from my wife, we agree that there has to be a support order from the court, but we agree that we are going to apply to keep out of your hair, right?

**Ms Pilcow:** You can agree in a domestic contract, though.

**Mr Sorbara:** Yes, but now under the new law that is not going to be able to happen any more; it has to go to my employer.

**Ms Pilcow:** No. If you choose to enter into a domestic contract you can keep it out.

**Mr Sorbara:** If there is going to be a court order.

**Ms Pilcow:** You do not have to agree to that. If you are agreeing, you can choose to agree on that in a domestic contract and have the rest be into it in an order.

**Mr Sorbara:** If it is going to be the order of a court, it is going to result in an automatic deduction order, absent—

**Ms Pilcow:** Right.

**Mr Sorbara:** —that little category. It is those statistics that I would like to be able to get a handle on, because if really you are improving your record by diluting the base with the good guys, then God, where are we, where have we gotten to? Absolutely nowhere.

**Ms Pilcow:** Certainly the intention is to improve compliance in those cases which are not complying.

**Mr Sorbara:** I hear you, and we would all like to do that. If we could agree that that is all that this bill did, I think we would agree with you on it. Anyway, Mr Chairman, I do not have any more questions.

**The Chair:** Thank you, Mr Sorbara.

**Mr Sorbara:** I would like to see those comparisons.

**Ms Pilcow:** I am not sure that we can do that, frankly. To the extent that numbers are available—

**Mr Sorbara:** I would like to see the comparisons as to what other statutes say about opting out—

**Ms Pilcow:** Oh yes, I am sorry.

**Mr Sorbara:** —as compared to what the Ontario statute says.

**The Chair:** Are you finished, Mr Sorbara?

**Mr Sorbara:** Almost.

**The Chair:** Thank you very much. Any further questions of the ministry staff? Seeing none, thank you very much for attending.

**Ms Pilcow:** Thank you.

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**The Chair:** There were a couple of items we should look at in terms of the agenda in front of us, the yellow agenda. Mrs Cunningham was particularly concerned about the depressing amount of time and the priority of this bill. I think you were also concerned about other legislation which may well be parallel to this but not dealt with under Bill 17.

**Mrs Cunningham:** Well, I just thought it would be an opportunity for us to at least draw to the minister's attention some of the priorities that come out of the discussions in the way of a report, rather than just walking away from an amended piece of legislation. I know research does do this, but I think it would be nice if the committee chose two or three priority areas as a result of the public hearings where the minister could do other work.

For instance, it is frustrating for some of us to sit here and look at this small, little piece that may or may not make a difference down the road—hopefully it will make a difference—and at the same time to know that we are not giving the same kind of time to really solving the problems of child poverty and taking a look at how the Social Assistance Review Committee is working and all those things. Not maybe the work of this particular committee, but certainly the work of those of us who are elected and I find myself in that position. So I think we will have an opportunity from public hearings to pass on some recommendations or concerns to maybe even chairmen of committees who can make it their business to look at it during the course of this government.

The second thing I was concerned about, and I will not really know probably until Tuesday or Wednesday, until we have started to hear some of the input and had a look at the recommendations for amendments from the government today, is how well prepared we will be to put forth the necessary amendments.

I just say that because we are so busy right now. We may be just fine, but I just wanted to put the committee on warning—and probably from everybody else's point of view too—that I hope that if we need a day later on, or two days later on, we will choose to do that. Not so much in public hearings but getting our work done. I just do not want to be rushed, that is all.

**Mr Sorbara:** Can I support that and, to be specific, suggest that we not intend to do clause-by-clause on Friday.

**The Chair:** I should hear Mr Fletcher before you.

**Mr Fletcher:** We are discussing the yellow copy also?

**The Chair:** We are, yes.

**Mr Fletcher:** I agree the time thing for some of the groups is kind of short. I would like to see it a bit longer myself. Also, I am looking at the Tuesday 12 February 2:30 slot. Are these, the Canadian Federation of Independent Business and In Search of Justice, in the same group?

**The Chair:** The clerk just drew to my attention an error here. I believe the 2:30 spot, the first one should be 2 o'clock. That is on page 2, referring to Tuesday 12 February. The first 2:30 should in fact be 2 o'clock, so there is a full half hour for the Canadian Federation of Independent Business, not a zero time allotment.

**Mr Fletcher:** I do share some of the concerns of Mrs Cunningham as far as the 15-minute time slots are concerned for some of these people and some of the travelling that they have to take. The London Status of Women Action Group, which was already mentioned, 10:45 to 11:15, that is a long way to come for a submission like that.

**Mr Sorbara:** With respect, Mr Chairman, you, as Chair, and the subcommittee agreed that this would be the procedure for this committee and I do not think it is appropriate for a government member now to be questioning that. It was the committee's decision a long time ago.

**The Chair:** Mr Fletcher was only echoing the comments of your own colleague Mr Elston.

**Mr Sorbara:** My colleague is a visitor to this committee, was not aware of the subcommittee's deliberations and is subbing here. The fact is that we are not in a position now to change this, to say that individuals should be given a half-hour. We decided that as a committee.

**The Chair:** Surely when someone is a sub he is still fully informed.

**Mrs Cunningham:** I am. I just want to say I do not think that was the intent.

**Mr Elston:** I am not. I could ask a whole series of other questions now since that point.

**Mrs Cunningham:** Mr Chairman, just on that point, I just think that Mr Fletcher was saying that we had some concerns around that and I think maybe even when it was struck we had some concerns but we had a time frame.



Now that we see what is before us, my bigger concern is the one that Mr Sorbara is talking about, and that is, to even begin to take a look at the amendments in one day I am feeling now—I may feel differently—but it may be an impossible task, given the importance of what we are trying to do and the complications and the questions today, for which we are all grateful.

That is all I am saying—let us not go away from here with it carved in stone that we are going to finish this thing on Friday. That is all I am saying.

**The Chair:** Thank you. I am reminded that Mr Fletcher did have the floor beforehand.

**Mrs Cunningham:** I am sorry.

**Mr Fletcher:** I was not in any way, shape or form going to amend this or change this. I was just expressing a concern that some of the other members had expressed and I agreed with them. So I was not about to go and change anything. I do not know where Mr Sorbara got the idea that I was trying to change anything. Thank you.

**Mr Sorbara:** Can I suggest that we not consider doing clause-by-clause on Friday? I have a very personal reason for doing that: I cannot be here on Friday. But besides that, we are going to be hearing people up until 6 o'clock on Thursday night. There are a number of government amendments that we have to meld into the bill. There are a number of items that we have asked to be provided in terms of research, and if we have the public hearings and then we look at the amendments and also are able to see the additional research, then we maybe can get our head around a good day or a day and a half's clause-by-clause consideration of the bill.

**The Chair:** Mr Sorbara, would you like to put that in the form of a motion?

**Mr Sorbara:** Okay.

**The Chair:** Mr Sorbara moves that the committee not sit on Friday 15 February 1991 and that clause-by-clause consideration of the bill be set over to a date to be determined by the subcommittee in consultation with the clerk.

**Mrs Cunningham:** Could I ask that the motion be dealt with perhaps on Wednesday, when we are better able to know how—is that fair, Greg?

**Mr Sorbara:** Yes.

**Mrs Cunningham:** I have not even looked at the amendments.

**The Chair:** Mrs Cunningham, there were two other hands here, but we will return to you in a moment. Mr Mills?

**Mr G. Mills:** I would just agree with that motion, because on Friday I will be on the drug strategy tour and I do not think that it is fair for my replacement to come in here, after I have sat here, and deal with clause-by-clause. I think that he would be lost. So, if you are looking for support, I think that I can give that very well.

**Mr Wessenger:** I have some problems with respect to the day you are going to schedule it for, because I certainly, I think, should be available on the clause-by-clause

hearing. I believe the day suggested was Wednesday and I think that is—

**Interjection.**

**Mr Wessenger:** No clause-by-clause this Wednesday?

**Interjection:** No.

**Mr Sorbara:** My motion was to the effect that we set a date in consultation with the subcommittee.

**The Chair:** Thank you. Ms Murdock.

**Ms S. Murdock:** Actually, this is in relation to what Mr Mills has said, because I was specifically asked to sit this week on this committee because of my knowledge of SCOE. I sit on other standing committees and this week I happened to have free. Although I would prefer to be in my riding on Friday, I set it aside to do clause-by-clause on Friday. It would be very dependent on the day that was chosen as to whether or not I would be available to do clause-by-clause and given that I am sitting here for the whole week, I think it is imperative that I be here for clause-by-clause. So I do not know whether I agree, unless it is going to fit into my schedule, and you cannot do that.

**The Chair:** My understanding is—

**Mr Sorbara:** Can I just comment on that?

**The Chair:** Excuse me. My understanding, as well, is that clause-by-clause may not finish on Friday, even if it starts then. Mr Sorbara.

**Mr Sorbara:** It is clear from what the Attorney General said that the ministry is not going to be in a position to actually proclaim this bill for quite some time. Even if we were to pass it tomorrow, they are looking at September and maybe December by the time they have all the machinery in place, including regulations to proclaim it.

So I think it would be perfectly acceptable to set over clause-by-clause to a day that is convenient to the people who sat through the hearings. I think we should accommodate Ms Murdock and find a day when she is available, but I think the subcommittee can do that. It may be April, it may be May, it may be June, but I am sceptical about considering clause-by-clause after three solid days of hearing submissions. I certainly will not be able to get my head around what I really heard and be able to incorporate that into an amendment that I would want to propose.

**Mr Fletcher:** I was just wondering, this agenda was set up by the subcommittee, is that right? I am just going by what Mr Sorbara said, that everyone should know what was on, that the subcommittee did recommend this. Why change what the subcommittee has already done?

**Mr Sorbara:** Excuse me. We are not here to fight with one another. I was on the subcommittee. I think I proposed it.

**The Chair:** Excuse me, Mr Sorbara.

**Mr Sorbara:** I have just made the motion now.

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**Mr Fletcher:** As far as what the subcommittee has done, I am willing to go with it, but to find a date that everyone is going to be available may be a little more difficult as we get closer to some of the things that are going on.

**Mrs Mathysen:** I am quite amenable to looking at clause-by-clause on another day, but I think that it should be fairly soon, because all of the information that we have acquired in this week will become more and more remote if too much time passes. So I would not want it to be put off until April or May. Second, I wonder, if we do decide to defer the clause-by-clause for another date, could we set that date here now, while people are present, and avoid further complications by having it go away to the subcommittee and then come back?

**The Chair:** So you are suggesting essentially an amendment to Mr Sorbara's motion.

**Mrs Mathysen:** Well, just some added input.

**The Chair:** Whereby the date is determined now and not by reference to the subcommittee?

**Mrs Mathysen:** I thought that might be a little easier for the people. Since we are gathered here, that might be easier than a subcommittee determining a possible date, coming back and finding that it is not a good date.

**Mr Sorbara:** Can I speak to that?

**The Chair:** I am sorry, Mr Elston is before you.

**Mr Elston:** I just wanted to indicate that the committee does not have to concern itself necessarily about the time in between now and March. We could sit when the House is back. We are generally then all around this place. That, I think, is still soon enough, and in fact for some of us who used to do the committee work quite a lot, it was always helpful to get a compilation of recommendations that we got from people who were presenters, and you could give the people in legislative research a bit of time, rather than pressing everybody to come up with the stuff the next day. I think it is a more humane way of doing the work, and then you can sit and you can ponder it. As soon as we got back to the House, if that was the time that we needed to do it, we could set a day when most of us would be around, I am sure. I for one would be in favour of discharging our clause-by-clause duties at a future sitting.

I am a little bit reluctant to tell you that I am going to be available on 19 March or whatever. House leaders sometimes end up being taken out of the play a little bit because of other things that have to be done. I am prepared to make myself available as flexibly as I can, but if the government House leader calls on us, we opposition people are at her every beck and call and, you know, we aim to please. But I would suggest that just for the sheer volume of work we are going to get into here, it would be a rational thing to do, to postpone it until later, and in fact maybe the early part of March is quite good—sorry, when we get back after March in the House, the early part of the House.

**Mr Wessinger:** Mr Chairman, I do not have your agenda for next week in front of me, but it would seem logical if we could extend from the Friday to Monday, include Monday as consideration of clause-by-clause. That gives us two days and plenty of time.

**Ms S. Murdock:** The Premier would probably have some—

**The Chair:** There is a small difficulty with that. We do have some items already scheduled. Being a legislative referral, this would take precedence over even the Premier's referral.

**Mr Elston:** What sort of protocol is it if the Premier is scheduled to appear? I would hate to be the Chair who sent him the note that said, "Don't bother showing up, Bob."

**Ms S. Murdock:** Yes, "We'll schedule you another day."

**Mr Elston:** His schedule is less flexible than ours, believe me.

**The Chair:** I think that might be true.

**Mr Wessinger:** Why could we not do this Friday and Tuesday, then?

**Mr Sorbara:** We have all next week.

**The Chair:** I am sorry, Mr Wessinger. Your suggestion is Friday this and Tuesday next?

**Mr Wessinger:** Yes.

**Mr Sorbara:** Well, again, my motion says give it to the subcommittee. There is a practical reason to do that. The fact is that it is etiquette and appropriate to have ministry staff here when you do clause-by-clause and when the amendments are going to be proposed. So there will have to be a parliamentary assistant here, or somebody is going to—if you are the parliamentary assistant—introduce the amendments. We need to have everyone's agreement on a possible day, so to try to figure it out here and now I think is really inappropriate.

If you really want to push it, you are going to defeat the motion and then we are going to come here on Friday to do clause-by-clause and one of us or someone, I hope from our party, is going to talk the clock for a long time, because I cannot be here. I do not think you can do it in four hours reasonably in any event. Look, you are the government. You are in the majority. You are going to make the decision. But I put the amendment not as a political tactic but to set over some time where we can actually do a good job of clause-by-clause on this bill.

**Mr Wessinger:** Could I just make a suggestion that we defer a decision on this motion until we have had a chance to discuss it further? I think that would be the logical—

**Mrs Cunningham:** If we could come back with some ideas.

**Mr Sorbara:** Wednesday is fine. Vote on it whenever you like. @N = **The Chair:** So you are suggesting voting on Mr Sorbara's motion on Wednesday?

**Mr Wessinger:** On Wednesday.

**Ms S. Murdock:** Table the motion till Wednesday.

**The Chair:** Table the motion till Wednesday?

**Mr Wessinger:** Yes, so we can have a chance to try to hopefully resolve the matter.

**Mr Sorbara:** I will abandon my motion and I just want to put the committee on notice that I intend to move it on Wednesday.

**The Chair:** At which time, Mr Sorbara?



**Mr Sorbara:** The top of the morning.

**Mr Elston:** Which Wednesday he is not prepared to tell you yet.

**Mr Sorbara:** You can check with the minister and see if it is all right and he will say it is okay and—

**The Chair:** Are you suggesting at the tail end of the day, sir?

**Mr Sorbara:** —your caucus will have decided whether or not you are going to support it. I am going to move it on Wednesday.

**Mrs Cunningham:** Look at them. They are absolutely open to this, Greg. Come on, think.

**The Chair:** This is an open government. Mr Sorbara, please.

**Mr Sorbara:** But why are we tabling it? That is what I do not understand.

**Mrs Cunningham:** Because none of us knows when we are going to be available. At least it gives us a chance—for instance, the reason I am glad it is tabled is because I can speak to Mr Harnick, who would love to be here, and say, “What do you think?” and “When can you be here?” That is why I am tabling it.

**Mr Sorbara:** But my motion said in effect that we will not have it on Friday, but we will have it on the date when it suits everybody.

**Mrs Cunningham:** Oh, I am sorry. All right. Fine.

**Mr Sorbara:** That is the subcommittee.

**Mrs Cunningham:** No, that is fine. If that was your motion, I do not have a problem with that.

**The Chair:** So we are tabling it until Wednesday at some point.

**Mr Sorbara:** No, I am going to move it on Wednesday. I am withdrawing it now and I will move it on Wednesday.

**The Chair:** Okay.

**Mr Sorbara:** Just to add, I think Murray is right. It should be some time after we are sitting again, one of our meetings, and we can do it then. It will probably go far more quickly. It will go much more quickly than it would on Friday in any event.

**The Chair:** Okay. Report of the subcommittee:

“The subcommittee met Wednesday 16 January 1991 to discuss committee scheduling.

“It was agreed that the following people be invited to appear before the committee on conflict of interest:

“Premier of Ontario, Attorney General, Deputy Attorney General, Conflict of Interest Commissioner, Doug Ewart, Ministry of the Attorney General, and all ministers.”

Any discussion? Mr Mills.

**Mr G. Mills:** Mr Chairman, I just think I would like to remove that “all ministers.” I think we are just going to sit here and listen to the same thing over and over again. What are we going to achieve by going through all that? So I move that we listen to the top five people on that list and remove the words “all ministers.”

**The Chair:** So you are moving an amendment of the subcommittee report?

**Mr Elston:** I think really the reason that the ministers are asked to come in here is that we would like not to go through some repetitive pro forma questioning of these individuals, but to really look at the conflict of interest as it applies to the people who have different types of holdings and backgrounds and the whole works. We can talk to them about the practical problems with conflict of interest, about how the compliance has either hindered or helped them, I guess, if that is the case.

I can tell you from past experience that each minister in our time as government met various problems and actually found different types of experiences. In fact for some people, because of their particular backgrounds, it became a very heavy and onerous obligation. As we look at the type of regulation that is being proposed here, each individual minister will have his or her point of view for us to consider as members of this committee.

I should not speak too long on it, because I am not going to be here sitting as a member of the committee when conflict of interest is done, but I can provide you with a little bit of my view on it because I have experienced it. I have experienced what it does in terms of the family requirements to fill in all kinds of documents, the type of outrage that I felt, for instance, when I had to divulge the location and the amount of money in my four-year-old son's bank account and give the numbers. It is very instructive for people going through this.

1730

Remember that the conflict-of-interest guidelines have a very particular perspective from which they are formulated, and they are formulated by bureaucrats generally. It is, I think, hazardous to the health of anybody who is looking at running for elected office; furthermore, much more hazardous if you are invited to become a member of the executive council. Now you are not always asked to join, but if you are asked to join, there are sometimes some very onerous regulations that are being proposed here.

I think that the reason we like to see the ministers is to see the types of snags and problems that they have encountered. I am not going to be here, but for some of us it is—I have a point of view that we have ridden the pendulum about conflict of interest to such an extreme degree that it is preventing some people who would otherwise be publicly interested in running or seeking election or even becoming members of executive councils from actually considering it.

It is the balance that we want to construct. For me, it is not some kind of inquisition so we can point to minister X and say, “Aha, caught you” or “You're being secretive.” That is not the point. This whole exercise speaks to whether or not people are going to feel like they can reasonably run and represent an area of the province and reasonably be comfortable in a position of a member of the executive council. That is what this is, for me in any event. I can tell you that each person faces the conflict of interest from a very different point of view. The politics of it are neither here nor there in a sense, because what are you going to do in a committee like this as you examine each individual minister?

We are honourable members, that type of thing, and we are not going to be asking people to take their shoes off so that we can see their toes, things like that. It is a very fundamental problem that we are wrestling with as elected officials. All three parties now have been in government in the last six years, just to take the most recent history, and none of us can point and say we will put in this type of clause to embarrass those people, because all of us are quite reasonably now expecting that we will be taking another turn at government soon.

After 43 years, some of us never thought it would happen. It has happened. Tory, Liberal and NDP governments have been elected here. All of us, as elected officials, can now reasonably expect to be faced with the prospect of conflict of interest. If we are prepared, as elected officials, to sit here and put in guidelines which restrict people from running or even thinking about running, then we are doing the province a disservice. It has nothing to do with the partisan nature of this, because we are all in it up to our eyeballs.

**The Chair:** Mr Elston, at the outset of your comments you made reference to your own knowledge and interests and how you would be willing to comment on that. Were you asking that the subcommittee report be amended to include yourself?

**Mr Elston:** No. Well, listen, I can come and tell you my reaction. I just gave you part of the reaction and I can give you personal anecdotes. But it is the personal side. If you want me to come and testify, I will try and make my way here. I do not have a problem with that. Include me there with the list if you wish, but it is from the point of view of ministers. They now are the current people who are most subject to this. I do not make the same type of filing. Mr Rae did not ask me to join the executive council—an oversight on his part of massive proportion, I assure you. I do not do it under his regime, but I do have a reaction. If you want me to, I will try to make some time but it is more important to talk about the people who have just gone through it.

In fact, today is what is currently called D-day, that is, disposition day. Parliamentary assistants will have had to have declared and done all their stuff by today's date. The ministers will have all had to have divested their materials to the best of their ability by today. So it is an interesting day to be talking about this. But it is particularly instructive, I think, for those people to tell us what they incurred.

Just one other little anecdote: One person who was a member of our government incurred a substantial cost in setting up his blind trust, for which there is no reimbursement; not just one, one I know more about. But there is no reimbursement to that person's cost of having set up the blind trust to manage his affairs while he was doing the stuff in government. So while he was paid a princely sum of—what is it? \$44,000 basic? You get \$12,000 or \$13,000 tax-free and then you get about \$20,000. I guess it is \$30,000 or \$31,000 as a minister.

A substantial amount yearly went to pay the administrative charges of the blind trust set to manage the affairs of that person's family. On top of that, he could not do

anything with respect to managing personal business and, as a result, when a person comes out of a business which he has helped to generate the income level towards, he loses on that.

I just want people to understand the context of the types of questions I am sure that the committee should ask. If you are going to make it so onerous and such a personal cost for individuals, then people quite frankly are not going to be tempted to run and, as a result, you are really not going to have a satisfactory representation in the Legislative Assembly.

I am not trying to tell people that you should have all sorts of wealthy people. I am not wealthy, you know. My assets are so poor that I almost got a donation from the Conflict of Interest Commissioner, I am sure. It is the type of thing where you have to be so careful that you do not poison the possibility of the general public being involved in politics because of the types of things you set up.

**Mr Carr:** The only point I want to make is that the intention was not to embarrass any of the ministers because none of them have had a chance to do anything yet. I remember when Mr Sorbara—

**Mr Elston:** Just a minute—

**Mr Carr:** Yes, I will not get into that. As I recollect, when the subcommittee talked about it, what we said is we wanted to give all the ministers the option. I think the analogy was that maybe one would like to come and talk about it but one has no particular concern and problem and that if we left it open-ended we might get eight, seven or whatever come in.

But I can tell you, as Mr Sorbara will do, that the intention was not to embarrass anybody because there is nothing to embarrass, although we did have a little bit of fun with a couple of people we could have called. But the intention was not to embarrass anybody and, if we leave it at that, I personally think it is a good idea if we leave it open so that some that may want to talk about it can come in. I do not expect we are going to get everyone, but we may have four or five that do want to come in.

What we are saying is we do not want to leave it so that the Premier comes in, talks about the way he sees it, but then the reality might not be there. So my intention would be to just leave it as it is. I do not know if we can even find out from the clerk what we would probably end up with. But I just feel that it is something that we should look at.

**The Chair:** I believe we had most of the ministers already scheduled, did we not?

**Mr Sorbara:** So why the motion?

**The Chair:** Okay. Mr Mills.

**Mr G. Mills:** Well, thank you, Mr Chairman. I looked at this list—

**The Chair:** I am sorry, Mr Mills, I recognized you out of order. Ms Murdock is next. Excuse me.

**Mr G. Mills:** You jumped someone. Yes, sure.

**Ms S. Murdock:** Actually, I was going to say, if the point was to have all the ministers here, then all the PAs should be here too. I have nothing to divest, so it has been



an interesting time. I do not know how much they would have for input, given that it is so new and the situation is so new. I guess the impressions of the whole thing, their experiences with the conflict of interest thus far would be pretty limited given their time. Actually, in truth, the previous government would probably have more information—

**Mr Kwinter:** That was the point I was going to make, yes.

**The Chair:** You will have the opportunity when she is finished.

**Ms S. Murdock:** So we agree. But it is really true that we have no experience from which to give—so I do not know how beneficial it would be to have the present ministers here. But former ministers who have not only the experience of it but the hindsight of it, I think would be much more beneficial to the committee. I too will not be sitting, so it is just an observation I am making.

**The Chair:** I think Mr Elston offered his advice. Mr Kwinter.

1740

**Mr Kwinter:** Well, that was the point I was going to make. If you are trying to get ministers here—and I will not be sitting at the committee either, I am just here as a substitute—it would seem to me that if the purpose of the ministers is to get some input as to their reaction, you should get previous ministers who have spent five years under the conflict-of-interest guidelines to say: “Here’s what it has done to me and here’s what I would recommend in hindsight. I am no longer there but here is what I think you should do.” If you bring the new ministers and the new PAs, what are they going to tell you? They are just going to say, “Hey, I filled out the form.” It would seem to me that that would be a more beneficial use of the committee’s time.

**The Chair:** The clerk brings to my attention the fact that after we have dealt with this amendment, we could certainly add more names to that list such as you have suggested, Mr Kwinter. Mr Mills.

**Mr G. Mills:** I was not trying to cut anybody off or anybody out because being a new parliamentary assistant I could not see such great difficulty in the process. It is just a question, as you said, of filling in a form and getting on with it.

Why I suppose I moved this was that the ministers were all named, and what I am trying to say is that if a minister wants to come, then we should hear him, but we should not have him named to appear. That was really my intent, not to force that great big stream of ministers to keep coming in here and saying the same thing over and over again because, as you say, they are all new. It made a lot of sense to me to hear the experiences of the former ministers and all the pitfalls. That is really who should have been on that list, in my opinion.

I would be prepared to withdraw that motion, Mr Chair, and perhaps someone would like to introduce some sort of wording that will permit ministers at their choice and ex-ministers at their choice to appear. I do not know how you are going to handle that.

**Mrs Mathysen:** I would basically like to reiterate what has already been said. I like Mr Kwinter’s idea very much because I think that bringing in new ministers one after another is redundant. They have very little to tell us. We need to, I think, draw on the experience of those who can give us information because this is an important bill.

**Mr G. Mills:** Why do you not make a motion to amend it?

**Mrs Mathysen:** All right. I would like to amend the report of the subcommittee and have the Premier of Ontario—

**The Chair:** Wait a second. Before you do that, I just want to clarify that Mr Mills has withdrawn his amendment.

**Mr G. Mills:** Yes.

**The Chair:** So yours is a different amendment?

**Mr G. Mills:** Yes. It is an amendment to—

**The Chair:** Thank you. Go ahead.

**Mrs Mathysen:** It is an amendment to the report of the subcommittee. I would suggest that we have the Premier of Ontario, since he is the initiator of the guidelines; the Attorney General, since he will be enforcing the guidelines; the deputy minister; the Conflict of Interest Commissioner, Mr Ewart, of course; if Mr Elston would like to be a witness, I think that would be quite appropriate, and any ex-minister who would like to come before the committee or former minister, and perhaps even some academics who have written on the subject. I am thinking now of people such as Desmond Morton and Ian Greene. They have written extensively on conflict of interest and the ethics thereof, and they might be able to shed some light too.

**The Chair:** That is a fairly substantive list. The clerk brings to my attention the question of ex-ministers. Would they all be invited? In what way would they make their intentions known to the committee or would the committee make its intentions known to the ex-ministers?

**Mrs Mathysen:** Can they not be contacted?

**Mr Carr:** How do we normally do it for some of the other bills? Maybe the clerk would let us know how it would be done when we lay it out to the general public.

**Clerk of the Committee:** I think the question for clarification was simply that, when she said ex-ministers, that could go back over a number of years, even decades. Perhaps there should be some clarification on ex-ministers, the government, those that were being referred to.

**Mrs Mathysen:** Ministers for whom it would not be an onerous task to come and testify before the committee? From the last government?

**The Chair:** We are still, I think, too vague. The difficulty is that we have a universe of ex-ministers, and how would you select a number of ex-ministers who would be interested and whose testimony would be of value, other than Mr Elston, who has already agreed to offer his wisdom?

**Mr Sorbara:** If I can try to be helpful, it appears that a number of the incumbent ministers have agreed to appear. The motion invites them, it does not summons them. The subcommittee, over the next few days, can work on

paring down that list and freeing up some of the ministers for whom this is grave inconvenience, but I think we should hear from the incumbent government about these guidelines. After all, it will apply to them. The fact that we invite all ministers does not mean that all ministers will choose to attend. Some of them can say, "Thank you, I prefer not to." So that is why I do not think your amendment is helpful, Gordie.

I do not have any problem at all if you want to add to the list ministers from the government of Ontario from 1985 to 1990 or even before that. I would love an opportunity to testify about living under the conflict-of-interest guidelines. I would love an opportunity to tell you how unrealistic your Premier's guidelines are.

Counsel, if he has done any corporate and commercial work, will know what is involved in selling a business and what is involved in the capital gains that accrue if you sell a business in an untimely fashion, like 60 days. Anyone who would do that for the right to sit at the pleasure of the Premier for perhaps a month or a week—when you make a mistake as a cabinet minister you are gone, and your business is gone too because you have had to sell it. I would love to, and I think a number of my colleagues would love to talk about—

**The Chair:** Mr Sorbara, are you moving an amendment to her amendment?

**Mr Sorbara:** Yes. I am going to suggest that the amendment add "to invite MPPs and former MPPs who have served in the government of Ontario from 26 June 1985 to 1 October 1990." They will come or will not come. My only problem with that is that it is an awful lot of work for Lisa, to get in touch with all those people—

**The Chair:** Between now and Monday.

**Mr Sorbara:** I wish we could just leave it like this and we could try in an ad hoc way to arrange to have some people come and testify and fill in. Murray would do it and I think my friend the member for Wilson Heights would be interested in doing it as well.

**The Chair:** It sounds as if we have a willingness to open the amendment up slightly. However, your amendment still was a little loose in the wording. Is it possible to present it in a more acceptable fashion? Then it could be referred back to the subcommittee or come back for further discussion.

**Mr Wessenger:** Can we not just say, as Mr Sorbara has said, that ex-ministers be invited to attend to give testimony at the discretion of the Chair?

**Mr Sorbara:** I can undertake to the committee to try to arrange for a variety of ministers acceptable to the Chair and prevail upon anyone that he suggests. Would that be all right?

**Ms S. Murdock:** At the discretion of the subcommittee, because then you can go back to your own parties and ask and set it up, and then do it through Lisa or the Chair.

**Mr Sorbara:** If we agree not to have a motion, I will agree to try to arrange for two or three ex-ministers to come and testify, and I will agree to try to prevail upon any others you would like to hear from. They will come if they

want to. It does not help to invite them by way of a motion. I will try to prevail upon them if you have an additional list; I will see if they can come. I will volunteer two or three.

**Mr Fletcher:** What are we discussing? Are we discussing the amendment to the amendment or the amendment to the motion?

**Mr Sorbara:** We are discussing not having any amendment whatever and just working on an ad hoc basis.

**The Chair:** Mr Sorbara, you did suggest an amendment to the amendment. Are you withdrawing that?

1750

**Mr Sorbara:** I suggested that we not change this, that we adopt this, but that in an ad hoc way I will undertake to provide two or three ministers and work on any other ministers the Chair or any member of the committee wants to hear from.

**The Chair:** By "this" do you mean we adopt the amendment or the subcommittee report?

**Mr Sorbara:** This is the subcommittee report. I propose that we adopt this, and do not amend it.

**Mr Fletcher:** Am I hearing that all we have right now is an amendment?

**The Chair:** That is what we should be voting on as soon as it is properly presented.

**Mr Fletcher:** I am just wondering how far we are on the amendment.

**The Chair:** We could have it read back but my understanding from the clerk is that, very simply, as it is worded it would be very difficult to effect.

**Mr Fletcher:** Do you have other wording?

**Mrs Mathysen:** I would like to make a motion to amend the report of the subcommittee to the justice committee regarding conflict-of-interest guidelines, and that the following people be invited to appear before the committee on conflict of interest: the Premier of Ontario, the Attorney General, the Deputy Attorney General, the conflict-of-interest commissioner, Doug Ewart from the Ministry of the Attorney General. I would also like to include Mr Elston, Mr Sorbara, and he suggested that a third former cabinet minister could be included. Shall we list those three?

**The Chair:** Mr Scott authored the last bill, did he not?

**Mr Sorbara:** He is going to be subbing on the committee so he is available to you, anyway.

**The Chair:** So will you be.

**Mr Sorbara:** I will be sitting on the committee.

**Mrs Mathysen:** Should we, for the sake of time, say "three former ministers" so we can hear what they have to say?

**The Chair:** Three former ministers, as with the arrangements of—

**Mr Sorbara:** As proposed by the Liberal whip? How is that?

**Mrs Mathysen:** Well, we do not need—



**Mr Sorbara:** You want to leave off incumbent ministers?

**Mrs Mathysen:** Yes, because I do not think they have much to add, being new. I think the former ministers would be far more able to speak to the problems.

**Mr Sorbara:** Well, we have already agreed to attend.

**The Chair:** Anything further with that amendment? That is the end of it: "Three former ministers, as provided by the Liberal whip."

**Mrs Mathysen:** Yes.

**Mr Carr:** A point of clarification: "all ministers" is left out? No "all ministers." You do not want them in.

**Mrs Mathysen:** Yes. Leave that out, because that is far too many people. I do not think they would be able to shed any light on it.

**Mr Sorbara:** Any ministers. You want none of your ministers to appear?

**The Chair:** Mr Sorbara—

**Mr Sorbara:** I do not want to hear from any of them, honest to God, or the Premier. I mean, it is ridiculous that they have agreed to attend—

**The Chair:** Mr Sorbara, please. Is that your intent?

**Mrs Mathysen:** To exclude the part that says, "all ministers," yes.

**The Chair:** Okay. Thank you. Any further discussion?

**Mr Sorbara:** They do not need your protection. Some of you voted against this. I thought you were looking for an opportunity to make this an open process. We will not hurt them badly. You will just ask them honest questions and you will get honest answers.

**Ms S. Murdock:** I do not believe Mr Sorbara has the floor.

**The Chair:** I believe you are right. Mr Fletcher is next.

**Mr Fletcher:** Thank you, Mr Chair. I am calling the question on this.

**The Chair:** All those in favour of calling the question?

**Mr Sorbara:** We are even using closure now.

**The Chair:** All those against calling the question? We have a tie vote. With a tie vote, it is incumbent upon me as Chair to maintain discussion. The calling of the question is defeated. We will proceed with debate on the amendment.

**Mr Sorbara:** Can I make some statements on the amendment? I think it is a good idea to have former ministers here to reflect on the present guidelines and the future guidelines. I am very surprised indeed that the New Democratic members of the committee would be attempting to protect their ministers even from the invitation to come to the committee. Read the motion. It says, "be invited to appear." Some have already agreed to appear, at least it appears they have agreed. Their names are scheduled to appear at certain times. If you think the list is too long, I would be perfectly happy to say, "Okay, let's hear from 10 of them, a cross-section," and we can negotiate that. But at this late date to say: "Next week we're not going to hear

from any of the ministers to whom these guidelines apply. We'll just hear from people who are has-beens," I cannot believe it. I do not know why you would want to do that.

**The Chair:** I am not sure if they are has-beens at the moment.

**Mr Sorbara:** I regard myself as a has-been.

**Ms S. Murdock:** I recognize the fact that both amendments had eliminated "all ministers," but my understanding in the previous discussion, before we voted on the motion, was that we would have incumbent ministers, who wished to, appear and that we would have former ministers, and then a big discussion on whether or not we would have three. That is what I understood.

**Mr Sorbara:** That is fine.

**Ms S. Murdock:** I know the hangup that is occurring on the opposite side is the fact that the word "all" has been excluded in this.

**Mrs Mathysen:** It is redundant.

**Ms S. Murdock:** Yes. But I think the question to be put is: Is there any objection to "some" ministers being called?

**Mr Sorbara:** If you want an amendment to say "the ministers who have agreed to appear or appear on the schedule," that is fine.

**The Chair:** Excuse me. Mr Kwinter?

**Mr Kwinter:** It may hopefully bring some clarity to this thing. I think the discussion really zeroed in on the fact that it said "all ministers," who are the incumbent ministers. It was my feeling that you cannot get the full flavour of what the conflict-of-interest guidelines really are from those people, but that does not say that some of them may not have something to say about it. All I was suggesting is that you should not remove the incumbent ministers and replace them with former ministers, but just have some former ministers to give you the benefit of their experience. It would seem to me that if you just leave it open, ministers and former ministers, and let the subcommittee decide the numbers it wants or who is available and then just structure it, that would solve the problem for you.

**The Chair:** Any further discussion on the amendment?

**Mr Sorbara:** Can I ask the proposer of the amendment if she would be interested in an amendment to her motion which would include the former ministers she talked about, and those ministers who have already agreed to appear before the committee and who appear on the schedule submitted to us by the clerk? Is that reasonable?

**Mrs Mathysen:** The schedule has listed all the ministers—

**Mr Sorbara:** No, it has not.

**Mrs Mathysen:** The schedule we received listed all the ministers, did it not?

**Clerk of the Committee:** The schedule lists the ministers who responded positively to the invitation that was extended to them.

**Mrs Mathysen:** Would it be possible, as there are three former ministers, to balance it with three current

ministers, and provide a balance there; three new voices without the redundancy of having all the ministers?

**Mr Sorbara:** You are going to win the vote, because you have the numbers. The reality of the situation is that ministers have already been invited to come. They have agreed to come. We have a week to consider this matter, and I am not sure why now you are trying to dramatically reduce the number. Do you only want three? Do you want time to caucus? Do you want me to counter with 10? I do not know.

**Ms S. Murdock:** It is unfortunate. Given political situations and the way things have worked, interestingly enough, we are doing this very openly. There is no agenda here. Actually, we just did not know. I do not think it is protecting the ministers or reducing numbers. It makes sense that we do not need a whole pile of present ministers coming in who know nothing about what the conflict-of-interest guidelines entail. It makes a lot more sense to talk to those who have already experienced it. If there is a big hangup here on the numbers game, then what I would suggest is that perhaps Lisa as the clerk could call those who have already agreed to come—nothing like giving you another job, Lisa—and just see how many of them will still come. Even so, with a minimum of three or a minimum of five. You want us to have more? Fine. But there is just really no profit in listening to new ministers talk about something they really have not experienced.

**Mr Sorbara:** Can we say perhaps a minimum of three?

**The Chair:** Ms Murdock, you are suggesting three or five.

**Ms S. Murdock:** For a little point like this, I do not care. Do you want to make it five people?

**Mr Sorbara:** Can we say a minimum of three and a maximum of 10, among those who have already agreed to appear?

**Ms S. Murdock:** I have no objection to a minimum of three, a maximum of 10. However, there is some discord on my side of the table and I would like to ask for a recess.

**The Chair:** Okay. A five-minute recess. Is that agreeable?

The committee recessed at 1801.

1807

**The Chair:** Mrs Mathyssen?

**Mrs Mathyssen:** All right. Will I read from the top?

**The Chair:** Please.

**Mrs Mathyssen:** All right. I would like to make a motion to amend the report of the subcommittee to the justice committee regarding the conflict of interest guidelines: "That the following people be invited to appear before the committee on conflict on interest: the Premier of Ontario, the Attorney General, the Deputy Attorney General, the Conflict of Interest Commissioner, Doug Ewart of the Ministry of the Attorney General, and a minimum of three and a maximum of five ministers from the former cabinet and the current cabinet; and that the ministers chosen be the choice of the

opposition regarding the former ministers and that the government choose the current ministers."

**The Chair:** Okay. You are suggesting then there be three to five ministers from the previous government, from the loyal opposition.

**Mrs Mathyssen:** A minimum of three, a maximum of five, yes.

**The Chair:** And the same number, three to five, from the present government?

**Mrs Mathyssen:** Yes. The former ministers that they think could best provide information, and we will choose the three to five ministers over here.

**The Chair:** So the method of choosing has been selected.

**Mr Sorbara:** I have a terrible headache and I think it arises from what you people have just done to a committee hearing on conflict of interest that was going to be interesting and informative. But you have the majority, so if you have caucused and you have agreed to do that, I think we should all go home and get some dinner.

I think it is unfortunate that even at this early date, even at a date when as you say they have not got anything yet to hide, you do not even want them to come. It may well be that we will finish up early and we will be able to do our clause-by-clause analysis of Bill 17 then, but do not count on it, because when you start to do that sort of thing, you start to poison the atmosphere of a committee.

Now this is not a fatal poison. It is not so terribly offensive. In fact it is typical of what governments do that have been in power a long time. You guys are learning even more quickly than most. What is surprising is that you would want to do that even after ministers have agreed that they do not mind coming, personally contacted. So you are going to win the motion. But count it: One, two, three, four, five is more than one, two, three, four, but I just want to tell you, because maybe Gordie will vote with us, that you poison the atmosphere when you do something which appears to us to be so arbitrary, where we have offered to bring forward our own ex-ministers, who went through hell, I want to tell you, on this stuff trying to comply.

Interjection.

**Mr Sorbara:** Hold on a second. I have the floor. I have a headache and I want to give each of you a little bit of a headache before you go.

I had thought that having seen the list of ministers who agreed to come before, that the Premier's office would not try to run interference and scoop the subcommittee by bringing forward that kind of motion, although I am not surprised. Under some circumstances maybe we would have done the same, but let me tell you that if that is what the motion is going to be, that is what the motion is going to be, and I would really like to go and have some dinner, so I do not have anything more to say about it except that I am really disappointed.

**The Chair:** Are we going to be able to vote? Any further discussion?



Oh, I am sorry, there is one significant point the clerk brings to my attention which is that we have a reference to the former government. We have of course all three governments.

**Mrs Mathysen:** The last government?

**Mr Wessenger:** No, I think we should say "former government." Why should—

Interjections.

**The Chair:** Are you going to caucus on this or should we—so we are looking then at the previous government, usually designated the Liberal government or the Peterson government.

**Mr Elston:** I have a question. How do we determine how many of each is to come? Is it in the motion? What is it, three?

**Mr Wessenger:** Three to five.

**Mr Elston:** I understand that, but some are supposed to be Liberals and some are supposed to be New Democrats.

**Ms S. Murdock:** Three to five of each.

**Mr Elston:** Three to five of each?

**The Chair:** Before the clerk asks the question, we already have two ministers, so is this three to five in addition to the Premier and the Attorney General?

**Mr Wessenger:** Yes, definitely.

**Mr Sorbara:** Would you be amenable to letting us choose who we want from your government, and you can choose who you want from our previous government? Would you be amenable to that?

**Mrs Mathysen:** No.

**Mr Sorbara:** Oh, so you are even going to protect the ones that might be—

**The Chair:** Mr Sorbara, please.

**Mr Sorbara:** It is outrageous. This is not the open and accessible—

**The Chair:** Excuse me, Mr. Sorbara. Mr. Kwinter?

**Mr Kwinter:** On a point of clarification, Mr Chairman: I do not know who makes up our committee, but there is a good chance that every member is going to be a previous cabinet minister, and they will not be included, I assume.

**The Chair:** Mr Poirier and Mr Chiarelli are on the committee as well, but Mr. Scott is subbing for Mr. Chiarelli, so two of your three would be ministers.

**Mr Kwinter:** But they would not be included in this.

**The Chair:** They could be. It is certainly at their discretion. I am sorry. Did I see someone's hand? No? Any further discussion on the amendment?

**Mr Sorbara:** Yes, just to let—

**The Chair:** I do not see your hand, Mr. Sorbara.

**Mr Sorbara:** Our committee moves to keep ministers from conflict of interest hearings. You are going to have to live with that.

**Mr G. Mills:** A point of clarification, Mr Chairman: Three to five, does that include the ministers that we have already named, the Premier, the Attorney General?

**The Chair:** We just heard the agreement that it does not include; that is what Mr Wessenger and Ms Mathysen said a few moments ago.

**Mr G. Mills:** Does not include.

**The Chair:** So we are talking of actually five to seven ministers from the present government and three to five from the previous government.

**Mr Elston:** The Attorney General is the one who is responsible for the guidelines anyway, so he has to be here to talk to the particular provisions, and the Premier is the one who is putting them together, so how can you possibly decide that you want those two to be included among your three to five?

**The Chair:** They aren't.

**Mr Elston:** I understand that. But that is how ridiculous you were becoming, because at least a couple of your members want it.

**The Chair:** The point I was making earlier, Mr Elston, simply for a point of clarification, was that those gentlemen are certainly ministers and are already being called, so we are talking of three to five in addition. Any further discussion? Question, please.

All in favour of the amendment? I see five. Opposed, if any? Four opposed.

Motion agreed to.

**The Chair:** All in favour of adopting the subcommittee report, as amended. Opposed? Four opposed.

Motion agreed to.

**Mr Fletcher:** Is there any more business here? I will make a motion to adjourn if you would like. There is? Okay, I will not make that motion.

**Mr Elston:** I just want to raise one item. During the presentation by the Attorney General's staff, there was a fair bit of runthrough of various sections of their amendments and other items, taken down by Hansard. I was wondering if it is possible that the Hansard copy, the draft, rough copy can be made available to us as soon as possible. I do not want any special pressure on Hansard, but since there is such a long list of items contained in the presentations today, without any copy of the remarks given to us. It would help us prepare.

**Clerk of the Committee:** We will try to get it as soon as possible.

**Mr Elston:** I am not asking for the next day, but if it is Wednesday or so, that would be helpful.

**The Chair:** Lisa also, I am sure we can all appreciate, has a great deal of work in the next few weeks. We would appreciate as soon as it is possible—she is hoping this evening—to have those lists of ministers and ex-ministers for next week's hearing.

**Mr Elston:** This evening? You have got to be kidding.

**Clerk of the Committee:** To be invited.

**Mr Fletcher:** I would like to make a motion to adjourn this.

**The Chair:** That is Lisa's request. Mr Fletcher moves to adjourn.

The committee adjourned at 1817.

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Telephone (416) 965-1456  
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**Index:** Elise Sloga, *Chief*; Estelita Chan, Lynda Middleton

**Editorial Assistants:** Bob Bubba, Corrine Marnoch, David Woodruff

**Printer:** Eamon Kade

**Secretary/Receptionist:** Lorraine Cohen









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# Official Report of Debates (Hansard)

Tuesday 12 February 1991

# Journal des débats (Hansard)

Le mardi 12 février 1991

## Standing committee on administration of justice

Child and Family Support  
Statute Law Amendment Act, 1990

## Comité permanent de l'administration de la justice

Loi de 1990 modifiant les lois  
relatives aux obligations  
alimentaires

Chair: Drummond White  
Clerk: Lisa Freedman

Président : Drummond White  
Greffier : Lisa Freedman

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday 12 February 1991

The committee met at 1006 in committee room 1.

### CHILD AND FAMILY SUPPORT STATUTE LAW AMENDMENT ACT, 1990

### LOI DE 1990 MODIFIANT LES LOIS RELATIVES AUX OBLIGATIONS ALIMENTAIRES

Resuming consideration of Bill 17, An Act to amend the Law related to the Enforcement of Support and Custody Orders.

Reprise de l'étude du projet de loi 17, Loi portant modification des lois relatives à l'exécution d'ordonnances alimentaires et de garde d'enfants.

### ONTARIO CHAMBER OF COMMERCE

**The Chair:** Please identify yourselves for Hansard, and welcome to the committee proceedings. We have half an hour for each presentation, which would be divided up into usually a 15-minute presentation and then the same amount of time for questions from the committee members. However, the time is yours to use as you wish.

**Mr Simington:** My name is Paul Simington. I am the manager of employee assistance at Dofasco in Hamilton.

**Ms Vickers:** My name is Janine Vickers. I am the personnel assistant of counselling services at Dofasco in Hamilton.

**Mr Carnegie:** My name is Jim Carnegie. I am the executive director of the Ontario Chamber of Commerce.

Thank you for this opportunity to share with your committee our members' views concerning Bill 17. To put our comments in context, for those of you not familiar with it the Ontario Chamber of Commerce represents 165 chambers of commerce and boards of trade in Ontario, with a combined membership of 65,000 as well as having an individual corporate membership in excess of 500.

As a business association, our unique character is derived from our active grass-roots members and the diversity of the businesses and industries we represent, from owner-operated businesses to large multinationals, from Elliot Lake to Toronto, from the local drycleaners to the major banks.

I had the pleasure of representing the Ontario chamber on an advisory committee convened by the former government to address enforcement problems relative to support and custody orders. We were extremely concerned by the extent of the enforcement problem presented to us. According to the figures presented by the support and custody orders enforcement office, since July 1987, 81,000 support orders had been filed with the office. Approximately 75% of these support orders are in default, with approximately \$334,000,000 recorded as arrears owed.

A recent study conducted by the Canadian Institute of Research on spousal and child support in Alberta found that 80% of separated or divorced husbands did have sufficient

disposable income to meet their court-ordered support obligations. It appears that while the money is available, it is not getting to the children who need it. An inability to pay does not appear to be a major factor in the default rate. It is clear to us that action must be taken to ensure that the beneficiaries of support and custody orders receive the income due to them.

A choice of what should be done, however, is a difficult one. In broad terms, the options are to greatly increase the staff of the SCOE office or to turn to the employer community. On balance, we believe the employer community is best positioned to enforce support and custody orders. A direct payment scheme as outlined in Bill 17 will increase collections and decrease the incidents of default. It will also likely result in an increase in recoveries of social assistance payments which will shift the obligation to support children from the government to the family.

Having said that, however, it is important to point out that the cost burden assumed by employers under Bill 17 is substantial in absolute terms, and further adds to the cost of doing business in Ontario at a time when our competitive position is already seriously eroded.

One of our member firms, Dofasco Inc, has identified the following concerns based on its experience with payroll systems and garnishments. I will ask Paul and Janine to comment from this point.

**Ms Vickers:** In subsection 3c(15), regarding duty to inform, it indicates that within 10 days we must inform the director's office in writing of interruption of payments. The payroll systems at Dofasco, for example, are set up in a manner that it could take up to 21 days before we are able to identify any interruption of wages.

In clause 1(3)(c), regarding the definition of "income source," it states that a benefit under an accident, disability or sickness plan would be considered income. We have two concerns that we feel should be addressed. Dofasco's sickness and accident insurer, London Life, is also the health and dental insurer. One situation that often arises is that once London Life has been served with a support order against sick benefit, it makes deductions on all claims submitted by that employee including those for prescriptions or dental care. Our suggestion is that these support orders be directed to wage loss replacement only, not against reimbursements for prescriptions, dental or other medical care benefits.

Another problem is encountered when the support orders served on London Life involve arrears. The amounts owing on arrears are constantly changing. In order to deduct the correct amounts owing, our carrier needs current information on balances on arrears. Would the director's office be in a position to provide up-dated orders within seven days, the time frame we feel is required, upon request?



We have been led to believe that under the proposed bill the disbursement of these moneys would be through separate cheques for each individual. Currently at Dofasco, one cheque is prepared each pay period, payable to the director's office, with an attached letter indicating the employees' names, case numbers and applicable dollar amounts. As it costs Dofasco about \$13 to prepare each cheque, it would be costly for us, and presumably for other employers, to issue cheques for each employee concerned. In our case, as 120 employees are involved in an average pay period, our annual cost would be about \$40,000. It is costly, especially when workable solutions are already in place.

Our single biggest concern is in subsection 3c(18) with respect to priority. A number of years ago, Dofasco's legal team researched the priority of judgements and orders. They concluded that only support orders were entitled to 50% of an employee's wages; all other judgements were entitled to the first 20% of an employee's wages. What this meant to our employees was that if the first 30% of their wages, for example, were spoken for with support payments, no other judgements could be processed. Our concern now is that under the proposed direct payment system, the support deductions would not be considered garnishments, thereby leaving an employee liable for an additional 20% of his wages to pay other judgement orders. While we have sympathy for families, the employee still has to survive.

**Mr Carnegie:** We believe a direct payment scheme is the right option to take. We are concerned, however, that employers will incur substantial additional costs. We believe the concerns identified in the implementation section should be addressed prior to adopting Bill 17.

We additionally recommend that a mandatory review of the implementation of Bill 17 after an appropriate period of time, say one to two years, be included in the legislation. This review would address the effectiveness of the bill in enforcing support and custody orders and the impact of enforcement on employers. That concludes our formal submission.

**Mr Carr:** I have a question. There are some sections in there about including everyone in this. I know we talked about some people who could opt out if they could supply four months' upfront money, and I was just wondering what your thoughts were. Would you like to see it broadly based to include everyone, or would you like exclude those where they can get an agreement between the spouse and the payer? In other words, do you see it as all-encompassing for everyone, or would you like to see those we think will pay not included in this system? I wondered what your thoughts were on that.

**Ms Vickers:** Right now, what we see with our employees is a positive reaction when we advise them that they can have these support payments deducted voluntarily. One of the things that seems to happen, and where I think the defaults come from in the first place, is that they have been left with an enormous responsibility to start with, in a lot of cases, credit card bills, for example, mortgage payments, whatever. They literally rob from Peter to

pay Paul, they get themselves into a jackpot, so to speak, where they cannot keep up. A lot of them find that if the money is taken from source, they cannot see it, they cannot spend it. It is gone, and they know they are fully accounted for.

**Mr Carr:** But what I was getting at is whether you think all the support payments should be included, or what your feeling is if there is agreement between the parties that they do not want to go through this system and want to do it on their own. Just getting back to what our fear is, we want to see the money go to the children of those people who will not pay, but we do not want to see the system clogged as with rent review and the court backlogs and the Workers' Compensation Board. When government gets involved, unfortunately, the ones we really want to help do not get it. If we can exclude them, it is my feeling that we might be able to help those generally in need, those children who are not getting it. I just wondered what your thoughts were, whether you liked that idea. Or do you see it being simpler to include everyone with the deductions?

**Mr Simington:** Sometimes it is far better if we can get a consistent rule so that everybody is working under the same set of rules, that there is not an exception from one person to another person. For consistency's sake, I think it would be far better for the payments to all go through one system.

**Mr Carr:** From your experience, having had a chance to look at the payroll system, and you say they rob Peter to pay Paul and so on, I know your company has very good relations with employees and trying genuinely to help them. Do you do anything to help in that regard, or is it just, "If we get this order, that's what is going to come off"? Do you work with the employees when you have a situation where—

**Ms Vickers:** We do everything we can. We work with the employees. We have contacts developed at the SCOE office in Hamilton; we will work with them. We have a very good working relationship with the support and custody office, in that they will listen to us. If the employee has brought us something—"Hey, there's something wrong with this. I've paid. Here's my receipts"—we can intercede. We will do everything we can for the employee in budget counselling, financial counselling, referral to outside agencies, if necessary, to help get him out of that dark period.

**Mr Carr:** You mentioned a little about the cost. This came up yesterday, and we were assured by some of the people that it is going to be fairly simple. Having been somebody on the front line, do you see the system being set up for employers as fairly simple? If I am a small businessman who maybe only has three or four people, is the system very simple?

**Ms Vickers:** It is simple the way it is currently set up. Some of the reading we had done, though, indicated that separate cheques would have to be made. If you have two or three employees affected, maybe it is not so costly. For us, that would be an administrative nightmare. Right now, we make one cheque payable to the director's office and then we supply all the information, and then they disburse

accordingly from there. If the payment system could work that way, that would be simple.

**Mr Carr:** In your discussions with the government—you suggested that you sat on the committee—did you get down to the detail of the forms that will be used? Did you get into that much detail, to keep things simple?

**Mr Carnegie:** Not in the early stages. That was a very large part of the consultative process, how to simplify this in the easiest possible way. Again, I certainly agree with the previous comment. If it is possible to limit that to one cheque, it is obviously going to be an awful lot less mechanical handling for major employers. One of the discussions in the early consultation was that, frankly, for the small employer it is not going to be a massive chore: You have one employee to handle, something along those lines. If you get into something of the scope we are talking about, individual cheques could be a serious problem. But every effort was made in the very early stages to make it as simple as we can.

**Mr Carr:** One last question. From your experience, because you actually see the cheques, you could probably tell us better than anybody whether there is the ability to pay. In your mind, is it a case of the money not being there or is it a case of them not wanting to give to the families? What is your best guess?

**Ms Vickers:** Generally, what we see is that the money is not there. The Wages Act currently exempts 50% of an employee's wages from being attached, yet a court will order in excess of 50% of his pay for support payments. It almost leads them to default, because by defaulting and having a garnishment put on, they pay less.

One employee who comes to mind is currently paying \$1,700 a month in support. He has a higher income than your average employee; however, that is still in excess of 50% of his pay. He is paying voluntarily through payroll deductions, so they are getting all the money. He could have defaulted, and we would deduct substantially less because of the 50% limit. But the difference between the 50% and the original amount ordered is falling into arrears at an interest rate of anywhere from 10% to 15% against him. That, first, is something I find to be a little ridiculous. Second, traditionally he is generally left with a lot of bills from the marriage. He is probably responsible for the credit cards, as I said, maybe the car payment, possibly the mortgage, and the support payments.

1020

**Mr Carr:** That is where the difficulty came. When I heard the 75% figure, I was, like most people, shocked. I could not believe it was 75%. Then yesterday in our discussions, we found out that sometimes they are trying to pay but there is not the ability to pay. So you are saying that is the case, that it is not—

**Ms Vickers:** From what we have seen.

**The Chair:** Excuse me, Mr Carr. Did you not just say you had your last question?

**Mr Carr:** Sorry. Just a last point. You are saying it is not a case of not wanting to pay but that it is financial, in

your judgement? What percentage would that be, a real high percentage?

**Ms Vickers:** That are in default?

**Mr Carr:** Because they just do not have the money. I know it will be ballpark, but is it very high?

**Ms Vickers:** Seventy per cent.

**Mr Carr:** So 70% do not have the money to pay. Sorry, Mr Chair.

**The Chair:** Thank you, Mr Carr. First thing in the morning is a good time for you, eh?

**Ms S. Murdock:** I want to thank you very much. This has been most interesting.

I just want a clarification from Dofasco. In the second point, for the support orders to be directed to wage loss replacement for the purposes of your carrier: I do not understand the ramifications, but I can imagine that the carrier would penalize the employee for that. But in 4, hypothetically, if we do say it goes to wage loss replacement, is there going to be any kind of problem when it is not considered a garnishment? Do you get what I mean?

**Ms Vickers:** I know exactly what you mean. Right now the only types of orders we would ever apply against an employee's sick benefit or a wage loss replacement are support orders. So with the points we bring up in number 4, there would be no conflict at all.

**Ms S. Murdock:** With the carrier?

**Ms Vickers:** No. The points brought up in number 4 are strictly related to wages, what happens right now against his wages. With his sick benefit, what happens is that our carrier, London Life, puts the garnishee against the employee. For example, you are taking 50% of an already reduced income, and if the employee, for example, has a heart condition and is submitting excessive prescriptions every month, \$100, \$200, \$300 every single month, they in turn are holding all of it, because one of the orders they had indicates this person is \$10,000 in arrears. So we have to hold every dime that comes in and remit it to Unified Family Court or SCOE or provincial courts or wherever it is going.

**Ms S. Murdock:** I see. So if it was entitled wage loss replacement, then it would not—

**Ms Vickers:** No problem.

**Ms S. Murdock:** Just another clarification on what you were discussing with Mr Carr. You say you have 120 employees. You send out one cheque for all of them who have support orders?

**Ms Vickers:** Depending on where they are going. For example, currently there are orders coming in from UFC in Hamilton and from the various provincial court family divisions, family division Milton, St Catharines, Cayuga, wherever.

**Ms S. Murdock:** So in effect, of your 120 employees a certain percentage would have support orders against them.

**Ms Vickers:** The 120 are the ones with support orders.

**Interjection:** Dofasco has a lot more employees than that.



**Ms S. Murdock:** I know it has more than that, but it could be office staff. I do not know. If five of them are with Unified Family Court, then you would send out a cheque for all five, is what you are saying.

**Ms Vickers:** Yes, one cheque to UFC for those five people.

**Ms S. Murdock:** Okay, I did not know.

**Ms Vickers:** Anybody who goes voluntary right now, automatically the money goes into support and custody. I think we have around 20 employees who are voluntarily sending to SCOE right now, so they would be all encompassed on one cheque.

**Ms S. Murdock:** Okay. One last question. If it takes up to 21 days before you are able to identify the interruption, would that also apply if—well, no—to get it into your computer system, is that what you mean?

**Ms Vickers:** Once the payroll is run and it is finalized, the diskette comes back to me with the deductions that were made and then it is downloaded and then we look there. The information is processed in main office and then it has to come back to me, because I have control of all the orders, and then I would be the one to have to communicate with these people, that with this person there was no deduction made. We would have to ascertain where he is—leave of absence, compensation, sick benefit—and then from there get things in place.

**Mr Wessinger:** I would just like to thank you for your presentation and also assure you that there will be no change required with respect to implementing cheques. You will not have to do a cheque for each individual.

**Mr Kwinter:** In your conclusions you say, "We are concerned, however, that employers will incur substantial additional costs," but you do not make any recommendation. Are you just waving that as a red flag, saying, "Try to keep our costs down," or are you looking for some compensation, like the people who collect sales tax?

**Mr Carnegie:** We have not looked at the compensation factor at this point. It really is the red flag warning. There was a lot of discussion on that point during the consultation process. Again, it is always a great concern, particularly on the effect it is going to have on our overall competitiveness.

**Mr Elston:** I basically want to ask, I guess, of the people who are here from the Attorney General's ministry—actually we have the parliamentary assistant, Mr Wessinger, and we have the policy advisers. I know the policy advisers will not tell us what they will tell the Attorney General, but perhaps the parliamentary assistant could respond to what appear to be fairly reasonable suggestions. Are you people open to considering changes along the lines that are suggested? Because if you are, then I think we could probably note these as items that would appear in amendments. If not, we may want to go on in detail so that we can prepare our own amendments. It is just a matter of timing more than anything else.

**The Chair:** Is this a question for the witness?

**Mr Elston:** No, it is a question for the parliamentary assistant as to how long I should proceed to—

**The Chair:** Mr Sorbara also had a question for the witnesses. I am wondering if that should be dealt with now.

**Mr Elston:** Just a minute. Listen, Mr Chair, I am only asking guidance. If the parliamentary assistant, who really is here representing the Attorney General—if the department is going to be open for considering these changes, I will sort of defer going into them in any detail. If there is no opening for these changes, which appear quite reasonable, to be made, perhaps we should take some time so that we can construct amendments. It is just a question of that. It would take less time if I knew if the parliamentary assistant had instructions to at least consider these or if the Attorney General's department thought that these were reasonable things.

**The Chair:** But surely yesterday when the minister was here or on Friday going through clause-by-clause is an appropriate time to deal with those, rather than the time when the witnesses are here.

**Mr Elston:** No. The witnesses have made these suggestions here to us as evidence. I am merely asking if the parliamentary assistant is open to some of their suggestions. If they are open to them, then I will not proceed to do a whole series of questions. If they are going to be closed-minded with respect to some of these suggestions, then I should ferret out a few more details so that we can prepare amendments which would assist the presenters, we think, in doing a better bill. I am looking for guidance from the parliamentary assistant because he knows what is happening. He got instructions just prior to this group of witnesses appearing here as to how open or closed, I presume, they can be.

**The Chair:** Mr Wessinger, you are certainly free to respond.

**Mr Wessinger:** My response would be that we are going to consider seriously all the suggestions made, and of course they will be reviewed with ministry staff.

**Mr Sorbara:** In other words, you are not going to consider it.

**Mr Elston:** Then can I ask the ministry staff if—

**Mr Wessinger:** No. I mean, obviously all the suggestions are going to be taken seriously and they are all going to be looked at seriously.

**Mr Elston:** That is quite helpful.

**The Chair:** I thought that was the point of these committee hearings.

**Mr Wessinger:** Yes, that is the whole point. We are here to get input.

1030

**Mr Elston:** But we know exactly where you guys head. The Attorney General has some flexibility in some areas and, you know, he does not in others. For instance, the suggestion that we lift our heavy hand from payments from a health insurer, for instance, for medications, is a good one, from my point of view. I am not going to pursue it, because Ms Murdock pursued that, and if it was something that the Attorney General's department—

**The Chair:** Mr Elston, you have asked Mr Wessinger the question. He has answered it. Are there other questions for the witnesses?

**Mr Elston:** Okay. Listen, I am going to proceed then to go item by item through each of these then, if that is what you want me to do. Ms Murdock asked a good question and I thought that it sounded like there was some reasonable chance that would succeed. If there is not some indication that it is rational, then I will proceed through it as well.

So I will ask the following questions of the witnesses. How many people would you have of the roughly 120 who would also be included in a health benefit-type reduction scheme now? You mentioned about the problem of somebody having heart medications costing a lot of money, for instance. How many would fall in that category?

**Ms Vickers:** Feasibly all of them could fall into it at some point. Any time they go off ill due to a non-compensable injury or illness, they could fall into that system.

**Mr Elston:** And could you tell me about the manner in which those payments would be submitted? If there is a separation, the spouse would still remain on the plan, I presume. Is that correct?

**Ms Vickers:** Absolutely.

**Mr Elston:** So that she in fact could be submitting claims for medications that she has paid for out of her own pocket.

**Ms Vickers:** There are two ways to go about that one. The non-employee spouse can give the receipts to the employee. He will submit them, get the cheque back in his name and give it to her. Or we suggest actually that the spouse go on assignment and she then can put her own prescriptions in and the cheques come back payable to her and then there is no contact between the two.

**Mr Elston:** But if there is a contact with the former spouse, then the payments being made directly to him would be held up by a garnishment under the current circumstances.

**Ms Vickers:** Yes.

**Mr Elston:** And in fact the two of them then are out of pocket.

**Ms Vickers:** Yes.

**Mr Elston:** Okay. In relation to the 120 with whom you deal now, how many would you see being affected by perhaps having to pay more than 50% if they had garnishments?

**Ms Vickers:** Probably half of them.

**Mr Elston:** So about 60 out of the 120 could possibly lose up to, as I understood it, maybe 70% of their income, with 20% garnishments plus 50% of this.

**Ms Vickers:** No, currently the only one entitled to 50% of an employee's wages is a support order. Everybody else is only entitled to the first 20%. If the first 20% is spoken for for something else, it cannot go through. If this changes, though, he could feasibly be looking at 70%.

**Mr Elston:** That was my question. The first 20% goes to garnishment and then on top of that, up to 50% of an amount could then go off to support orders. That could be worked out to be 70% of his net wages or it could, I

suppose, be worked out to be 50% of the amount remaining after the 20% was taken.

**Ms Vickers:** If an order comes in from the government, it is actually 80% that he could lose.

**Mr Elston:** He could lose 80%?

**Ms Vickers:** The government is entitled to 30%; everybody else is 20%.

**Mr Elston:** So in fact what could happen is this person could pretty quickly be propelled into bankruptcy.

**Ms Vickers:** It is not even bankruptcy, because what happens, in all honesty, is they quit. They throw their hands up. We spend hours with many, many employees trying to convince them otherwise.

**Mr Elston:** So you end up trying to counsel these people to find a solution.

**Ms Vickers:** To try to see the light at the end of the tunnel.

**Mr Elston:** And in many cases, at this point they cannot. Do you see this legislation helping or hindering that?

**Ms Vickers:** I would see it as helping in that, the way I understand it, the orders would come directly from court to Dofasco, come off their pay, so they are not in an arrears situation.

**Mr Elston:** But how does that help them if they are subject to a loss of 80% of their net pay? I presume that is net after they get rid of group insurance payments, UIC and income tax.

**Ms Vickers:** Actually after income tax, CPP, UIC. Hopefully what will happen is it would still be recognized as a garnishment as far as priority of judgements and orders are concerned in that the other orders would not be able to go through.

**Mr Elston:** Okay. Perhaps what we could do then is get some advice from the Attorney General's department on the order of precedence at a later date. I am just noting that for the record, but I appreciate that.

**The Chair:** So that is a request for later information.

**Mr Elston:** Yes, for information as to the ranking of these claims, because if somebody is going to end up losing 80% of his income, we will get the same sort of retirement from position, if I could call it that.

How many people now would you say are facing pressures like that in your group?

**Ms Vickers:** Of the 120 who are on orders?

**Mr Elston:** Yes.

**Ms Vickers:** Once again, probably back to the same 50% of them. Some of them have been on for so long now that the arrears are long since gone and they are down to the tolerable amounts of money, but there is still a good 50% of them who are struggling, 50% to 60% who are struggling.

**Mr Elston:** So that is a large group and I note for the record that Dofasco has a fairly active employer counseling employee-type network, probably unusual in most of the other large firms. So if we are finding that you have that large a problem, it probably is going to be a bigger one for others, and in fact the point of the bill will probably, or



could possibly, be lost if we do not make some changes there then.

I want to check as well, as I guess Mr Kwinter mentioned, about the reimbursement or possibility of reimbursement. How far is Dofasco prepared to go, I guess, in terms of assuming the cost for this before—and this is a tough one—but if for every employer there is a cost of 120 people that they are managing for somebody else, basically, what do you figure you spend now on some of the cost of employee relations, if I could describe it as that?

**Ms Vickers:** Employee relations or the cost of honouring support orders?

**Mr Elston:** The employee relations, because the honouring of support orders will be part of employee relations, I assume, in terms of a corporate report.

**Mr Simington:** I really would not have any guess on that and I would hate to just guess at a figure.

**Ms Vickers:** I think anything we would guess would be very conservative.

**Mr Elston:** Okay. But you are prepared to spend a fair bit more on employee relations in terms of the operation of the plant to develop the direct pay scheme, I take it.

**Mr Simington:** Yes. We definitely would absorb the cost on it. But as I say, with the economy as it is today, it could get very difficult for Dofasco or smaller companies as time goes on.

**Ms Vickers:** Obviously, if it is mandated, we have to. It was not something we wanted to jump into voluntarily because of the cost. We could currently be looking at \$40,000 annually in the cost preparation of cheques if they were all individual payments, for example.

**Mr Elston:** Will you save money by making all payments to the SCOE office?

**Ms Vickers:** Yes, from a bookkeeping standpoint, it would probably be better. Everything is going to one place.

**Mr Elston:** So you will be going to one office, presumably a regional office in Hamilton.

**Ms Vickers:** Hopefully, we will be going to the SCOE office in Hamilton.

**The Chair:** Mr Elston, we have run out of time. You have other questions?

**Mr Elston:** Why have we run out of time?

**The Chair:** Because it is past half an hour.

**Mr Elston:** You guys are so tied up with your time restrictions that we are not going to be—

**The Chair:** I would like to thank the witnesses for their presentation; obviously, from the questions, a lot of very thought-provoking comments. Thank you.

**Mr Sorbara:** Just on a point of order, Mr Chairman: I did have a question for these witnesses, and I want the record to note that apparently you do not want me to ask that question.

**The Chair:** You have every right to ask any question you wish to. Mr Elston took up some of the time that your caucus could have used in asking a question of the—

Interjections.

**The Chair:** I am not sure that is a point of order. We have run out of time.

**Mr Sorbara:** Okay, well, on the same point of order—

**The Chair:** We are past half an hour. Thank you very much.

**Mr Sorbara:** My understanding was, on the point of order, that after submissions by the witnesses there would be questions from the official opposition, then the third party and then the government. I would just like you to reflect on that, because we would like to know what the procedure is going to be.

Interjections.

**The Chair:** Excuse me. Order, please.

#### CANADIAN BAR ASSOCIATION FAMILY LAW SECTION

**The Chair:** I would like to recognize Mr Slan from the Canadian Bar Association, family law section. On behalf of the committee, I welcome you. As you may know, we have half an hour, which can be divided up in any way you wish. Usually the three caucuses would like to ask questions, so would you allow some time at the end of your submission for those questions.

1040

**Mr Slan:** Thank you. My name is Paul Slan. I am the chair of the family law section of the Canadian Bar Association, Ontario branch. First, I would like to indicate to the committee that the bar association does support the idea of payroll deduction for the enforcement of support orders. We have some concerns, though, and I would like to outline those.

Just by way of background, when the act came in in 1987, I think it is agreed, it was basically an enforcement act with very little, if any, discretion allowed to the director of support and custody enforcement. Basically the benefit from the point of view of the bar was that the onus for enforcement was being shifted from the debtor, the private individual, to a government agency which would do the enforcement, free of charge.

It was not seen as a piece of legislation that really affected the rights of the parties. It was more enforcement of an order that had been previously made. I think the only aspect that allowed for judicial discretion in the existing legislation would be on the default hearing, which was the last resort in terms of enforcement, and even in the default hearing there was a presumption that the debtor had the ability to comply with the support order. That was really the only aspect of judicial discretion.

The bill that is now being proposed, although as I say, it is a good idea in the view of the bar, the difficulty is that we are going to have much more litigation arising from these amendments, and the concern that I am pointing out is not dissimilar to the concern that I raised when the access enforcement bill was under discussion in this committee: that the amendments are creating a superstructure on top of the existing mechanisms for the determination of support and the result will be a great deal of litigation

between the director, the debtor, the income source and possibly the parties to the initial dispute.

Some of the problem areas which lead me to these conclusions are the definition of income source in section 1. I think it is not a bad definition, but I think there will be some litigation over whether an employer is an income source or not. I also have a little bit of difficulty understanding why it is restricted to periodic payments if the idea is to enforce the existing support order.

Another problem is section 3a of the bill, which provides for the mandatory support deduction order at the time the original support order is made. Now, I am missing it in the bill; I do not see any guideline to the court as to the amount of the support deduction order. Is the support deduction order to be 100% of the actual support order? Is it to be 50%, is it to be 75%, or what? I recognize that in subsection 3c(6) dealing with arrears, the support deduction amount can only be 50% of the actual support order. I am not sure why we have this provision restricting the amount of the deduction to 50% of the actual support order, and again, that amount must be by way of a periodic payment. The point in this is, I guess, that there is already a remedy. If someone has arrears and he feels that he cannot pay them, then he has a remedy to apply to the court that made the original support order to vary that order and in fact to retroactively deal with the arrears.

So it seems to me that by way of these amendments we are putting in certain safeguards, I suppose, in terms of the amounts that can be deducted, but to my mind it is a duplication because there already is a remedy in terms of making an original application to vary the support order.

The same criticism applies to subsection 3c(8), which is the section that provides that only 50 per cent of the net amount of pay can be deducted. Again, if a debtor has a problem with the amount of pay that is being deducted, why does that debtor not go back to the court that made the original support order and vary that order? Why is there a restriction here as to 50 per cent?

In subsection 3c(9), that does allow the director to apply on motion to ask for more than 50 per cent by way of deduction. The difficulty there is that there are no criteria set out in the legislation to know when that should be allowed and when it should not be allowed.

Subsection 3c(12) allows an income source to dispute whether or not that entity is an income source, but it appears to only allow the director to make the application. It does not seem to make provision for the income source to apply and that may be of concern to employers because their liability, according to subsection 3c(13), is accruing at all times.

Subsections 3c(15) and (16) deal with the duty to inform of the employer and the employee of changes in their status and it seems to be that without some notice going out and some type of publicity going out to both employers and employees, that is going to be honoured in the breach rather than as the norm, and there are some concerns about that subsection.

The most criticized section has been 3d, which provides for the immediate suspension of the support deduction order by the court making the original support order,

or at the time of the original support order or later if there has been a material change in circumstances. The criteria set out in the legislation is unconscionability. God knows, family law lawyers have enough difficulty determining unconscionability under the Family Law Act and there are even less criteria here as to what unconscionability is than exists in the Family Law Act. We know that unconscionability is a very high standard, but other than that we cannot define it. So there should be some guidelines, in our view, as to what constitutes unconscionability if that is to remain in there.

The other, I suppose, rhetorical question is if the test is so high, why have it at all? Why do we need it? If the idea is to have mandatory support deduction in all cases, why provide for the suspension of it in any circumstances?

Subsection 3e(2) provides for an interim variation of a support deduction order and that is only allowed if an application to vary the original support order has been made. Our suggestion on that is that it seems to me you would only want to vary the support deduction order on an interim basis if the actual support order was varied on an interim basis. I cannot imagine circumstances where you would vary the support deduction order without actually varying the support order.

Section 3g of the bill deals with termination, and if I read it correctly, the support deduction order continues even if the actual support order is withdrawn from the director's office. I have some question about how you actually get out of the support deduction order once the support obligation terminates. The section seems to say that if the director is satisfied that the support order is terminated, then the support deduction order itself terminates and if there is no agreement on that point, there is provision for a motion to decide that issue by the parties, and the director, it appears to me, is not a party to that motion.

#### 1050

The last area that again will create more litigation arising from the amendments is section 3i which allows for the debtor's motion to the court to dispute how much is being deducted whether there has been a default after a suspension order is made or to dispute the amount being deducted on account of arrears.

In summary it seems that there are going to be all kinds of litigation arising out of the operation of the amendments as to whether the support deduction order should be made or not, whether the director can deduct more than 50% or whether the director can deduct more than 50% of the actual support order for arrears, whether someone is an income source or not, whether an order, once made, can subsequently be suspended on the basis of a material change in circumstances, and whether a support obligation has terminated. We wonder whether there is any simpler way to do it all.

The existing order now provides for the debtor's name and address on the order and for the creditor's name and address on the order, and that was done by way of amendments to the rules of civil procedure. I am not sure why the order could not also specify the name and address of the employer right on the order. The judge will have that information at trial if the judge has heard evidence about the



ability to pay. If it is a consent matter, the lawyers are certainly in a position to provide that information because in point of fact that is what they do now, supply the creditor's and debtor's names and addresses.

We are not sure why the order simply could not go to the director and the director pass the order on to the employer and the employer be bound to make a deduction in the amount of the actual support order that was made. I think the presumption is that once the support order is made, that is the correct amount, I do not see the difficulty with automatic support deduction without the superstructure that is being imposed by the amendments. As far as changes that may happen subsequently are concerned, again there is a remedy in that there is already a remedy for the debtor, or the creditor for that matter, to apply back to the court if there is a material change in circumstances. Presumably, if the support order itself is changed, then the support deduction order would be changed.

I think that is all I have to say about it.

**The Acting Chair (Mr Fletcher):** Thank you for your presentation. We have questions of approximately 15 minutes and equal time to each party will be given, starting with the Liberals.

**Mr Sorbara:** I want to begin by thanking counsel for his presentation. I hope that the committee could have at some point, Mr Chairman, some time to discuss how we are going to proceed in these hearings, because I think under new direction of this committee, under the new government, there has been a change of rules. I am newly sitting on a committee and I would like to have a discussion of those rules before we get too much further into this hearing or the committee gets too much further into its work.

I want to ask Mr Slan, first of all, whether as a family law practitioner, and I take it you are a family law practitioner, you have any sense now of how many support orders are actually processed through the support and custody order enforcement branch?

I know that you do not do research on this and I do not suspect the family law bar does research on it. Apparently the Ministry of the Attorney General does not do research on it either. What I am trying to come to grips with is how many additional cases the support and custody order enforcement branch will have as a result of this legislation. I understand generally that the law currently is that an order for support is automatically filed with SCOE, but that there are a great number of circumstances, including consent of the parties, where they are not filed with SCOE.

Do you have any sense of that? You mentioned that the only exceptions here were one dealing with security and one dealing with unconscionability. I tend to agree with your views on unconscionability; if it is such a high standard, why have it there? Can you help me with this problem?

**Mr Slan:** In terms of the numbers that are withdrawn, we do not see very many being withdrawn at all. I think the only circumstances in which they can be withdrawn is the consent of one or the other party, as it stands now, but we see very—

**Mr Sorbara:** Both parties, I would take it. You would have to have consent of both parties, would you not?

**Mr Slan:** I am not sure that is the way it reads now, but we see very few being withdrawn.

**Mr Sorbara:** That is very few that do not go to the support and custody orders enforcement branch out of—

**Mr Slan:** They all go and then we do not see them. The party can then make arrangements with SCOE to withdraw, but we do not see those. We hear of very few that are withdrawn.

**Mr Sorbara:** So it is your view, at least within the texture of your own practice, that virtually every order that calls for periodic payment does get registered with the branch?

**Mr Slan:** Oh, yes. I do not think it is restricted to periodic payments; any support order. It has to go there. Then it can be withdrawn subsequently, but we do not hear about very many of them being withdrawn.

**Mr Sorbara:** Now you suggested in your remarks that there was a complexity in this legislation that need not be there. Could I just hear you on that in a somewhat expanded version?

**Mr Slan:** It creates several areas of potential litigation over whether the order should be withdrawn immediately after it is made, whether it should be withdrawn subsequently, whether an entity is an income source or not, whether more than 50% of the net pay of the employee should be deducted, whether more than 50% of the actual support order should be deducted for arrears, whether the support order has terminated or not, whether there has been a change in circumstances. It creates a lot of different openings for litigation over the deduction. We feel that if there was simply automatic deduction, many of those same problems could still be dealt with under the existing legislation, which provides for variation of the actual support order. In other words, why can the deduction not follow the event of the support order?

**Mr Sorbara:** I am going to do what generally lawyers are counselled not to do, and that is to ask you a question without any idea of what answer you are going to provide me with. We are trying to get information here, not just argue positions.

The previous government was moving forward with a bill very much like Bill 17, but it included a so-called policy of kickout; that is to say, once there was a clear period of regular payments for a specific period of time, the system of collection and forwarding of moneys would go out of SCOE and the parties would do that directly.

As a family law practitioner, what would you think of that sort of system? You obviously cannot answer for what the implications would be for SCOE. Our view was that would reduce or eliminate an unnecessary workload for SCOE; that is, SCOE would only be enforcing orders where there was the likelihood or evidence that they would not be otherwise honoured. You have a clientele, though, you are in this business. You see the parties. What would your view of that be?

**Mr Slan:** What we like to say in family law, and it is an easy out, is no two cases are ever the same. I would not be terribly impressed by that type of scenario. Things change all the time. I do not know that a record of consistent payments would be, in my view, sufficient to lift someone out of SCOE. We think that the enforcement agency is a good thing.

**Mr Sorbara:** I think everyone agrees about that.

**Mr Slan:** We want to see it continue. My remarks are simply restricted to the proper approach to the payroll deduction.

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**Mr Sorbara:** The question for us, I guess, was this: Although we all agree that the agency is a good thing, most or many support orders have 5- or 10- or 15- or 20-year periods of duration and sometimes an indefinite period of duration. If the obligations under those orders could be self-enforced, there was no need for the state, after the state is satisfied that they would be complied with, continuing to enforce.

**Mr Slan:** I think, by and large, clientele have been happy with the fact that they know where to pay, that they know when to pay, that there is a record kept, that they do not argue about whether a payment has been made or not been made.

**Mr Elston:** There are some shaking heads behind you which says there is no unanimity.

**Mr Slan:** There have definitely been some problems with the recordkeeping, which have to be improved.

**Mr Sorbara:** There is no doubt about that, and I think you are right about that. I guess the question was the administrative burden. If I am receiving a payment and paying out a payment that I do not have to receive and pay out, then I am taking up administrative time, where I could be applying those scarce resources to cases where a more effective method of enforcement would be appropriate. I am just looking for your views anecdotally because of not only your practice but your position within the family law bar.

**Mr Slan:** Anecdotally, I think that if I had to choose between those two options, I would choose to have the enforcement scheme maintained but utilize the resources to improve its operation in terms of the administration.

**Mrs Cunningham:** Mr Slan, I remember the family law section coming before the hearings on Bill 124, raising a lot of questions. I sat on the committee at the time. I am not a lawyer so when I ask questions, I often do not know the answers, so if you will just bear with me.

That piece of legislation, in my view I was glad it never came back again, because from my work with families on custody and access and in fact in support payments, our hope is that we are probably going to have more compliance with this legislation, as a collective "our." In your view, do you think that this would be helpful, this legislation, just from what you have—

**Mr Slan:** We are talking about the support deduction now?

**Mrs Cunningham:** The other one, I would have guessed, would not have been helpful at all in access. It would have made more people unhappy. More kids would have been angry with fathers and mothers. It was a useless piece of legislation as far as I was concerned. I have those views and that is the way I felt. I still feel that there should be improved access and supervised access and there ought to be a lot of programs out there, but I do not think legislation would have helped at all, in my view.

On this one, I feel the same way, I am sorry to say. From a practical point of view, I would like to see the agency have more resources to get the job done and front-line people working to support people in businesses, not unlike the Dofasco people who were in here, who I feel probably get a lot of compliance out of their personnel given the current system. I am wondering when you view this as a family law practitioner, do you see this as being helpful and having more people comply? To me, that is why we have the legislation.

**Mr Slan:** We support the idea of payroll deduction. I have indicated what the concerns are with respect to these particular amendments, but we support the idea of payroll deduction.

**Mrs Cunningham:** Given the list of concerns, there would not be much left to this piece of legislation if you were to have your point of view, I would think. Are there parts of it that you do like?

**Mr Slan:** We like the principle.

**Mrs Cunningham:** I know, but I like the principle too. But I have to deal with this piece of legislation. If you are telling me that more parents are going to be in the courts because of it, I do not find that helpful.

**Mr Slan:** I am not sure it is the parents who are going to be in court. I think it is the director who is going to be in court, and perhaps the employer. I am not sure that the parents or the parties to the order are going to be.

**Mrs Cunningham:** As a parent I can tell you that when my employer is in the court on my behalf, that involves me, so I am looking at something that will improve. As a politician I get these families in my office a lot and I want to know, from your point of view, if you think it is helpful. You like the idea of payroll deduction. You came here and said that happens now.

**Mr Slan:** I did not say payroll deduction happens now.

**Mrs Cunningham:** All right. Perhaps you could tell me what part of this legislation is most helpful? You talked about the superstructure we need in order to enforce this. Are there parts of it that—

**Mr Slan:** The principle of mandatory payroll deduction will be most helpful in terms of enforcement of support orders. In my view, the other safeguards in the act are already in place. One can already go back and vary that support order if it turns out that there has been a change in circumstances.

**Mrs Cunningham:** Okay. In 3g I will be specific, because that one interested me. How do you see us improving that section with regard to getting out of the support order?



**Mr Slan:** That is the termination of the order?

**Mrs Cunningham:** That is right.

**Mr Slan:** It seems to me that the enforcement should cease when the order is terminated. There is often a dispute as to whether an order is terminated, because many orders will say that they continue for as long as the child is a child of the marriage, as defined by the Divorce Act, and that is subject to interpretation. Generally, it is interpreted as to the completion of one undergraduate degree, but there are permutations and combinations.

Historically, the problem has been that the judge hearing the enforcement application is met by the objection, "This order is finished; it is terminated," and the judge then has to interpret whether it is or is not. In fact, the provision for an application to the court by the parties to determine whether the order has been terminated is, I think, a good provision.

What I do not quite comprehend is why the support deduction order continues. I do not understand the exact timing of this section and when it terminates. Also, if the parties withdraw from SCOE, withdraw the original support order, it appears that the deduction order continues. I do not understand the rationale for that.

**Mrs Cunningham:** I would like to hear from the administration but that was ruled out earlier on that issue because perhaps the witness could be satisfied that that has been thought about or that there is some response to your question from the ministry. But that is not appropriate at this time.

During the discussions and the consultations around this legislation, did you in fact have adequate input from the Canadian Bar Association, family law section?

**Mr Slan:** Yes.

**Mrs Cunningham:** So you are here today, you won a few, lost a few kind of thing, and perhaps we can, in our deliberations as a committee, take a look at your questions today and improve upon them.

**Mr Slan:** Yes.

**Ms S. Murdock:** Just a couple of clarifications. I like the idea actually that you have suggested that the employer be named on the court order. It would seem to me that it would take out one of the steps of administration, which I think is good. But I am just wondering if, in doing that, the recommendation then that you are making is that the employer upon receipt of the order would have notification and then the employer would make the determination as to what the deduction would be on the cheques.

**Mr Slan:** I would think it would be right there on the support order. If someone is ordered to pay \$500 a month, then the employer would be served with a notice that that is the amount of the deduction.

**Ms S. Murdock:** Okay. I am just wondering whether that puts more onus on the employer rather than having the department or the director indicate the amount.

**Mr Slan:** My suggestion was that the order go to the director first, as it does now, and then the director notify the employer. Now the director notifies the debtor. The

suggestion is that the director notify not only the debtor but also the employer.

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**Ms S. Murdock:** Okay. Yesterday I made a comment about the personal aspects. Under present legislation and prior to SCOE, the personalities of the spouses got involved in terms of oftentimes not paying because they were angry with their spouse. As a result, the children suffered, or whatever the reason, but a lot of the problems that ensued were because of personalities. Would you agree that this proposed legislation takes out the personal aspect of that and that it becomes an administrative thing with no choices being able to be made by the parties?

**Mr Slan:** I suppose if there were no avenues of possible litigation available under the act, then it would take out personalities. But as long as someone has the option of doing something before the court, then personality will be a factor.

**Ms S. Murdock:** Okay, but I noted your points of concern in the proposed legislation, and in almost all instances they are procedural kinds of things, like the director objecting. With the exception of varying the order, they are all procedural kinds of litigation.

**Mr Slan:** The unconscionability section is not procedural, nor is the material change in circumstances provision. Someone could come back conceivably every six months to vary the support deduction order.

**Ms S. Murdock:** Yes, that is what I said, with the exception of varying the order or suspending.

**Mr Slan:** That is a pretty big one.

**Ms S. Murdock:** It is a big one, I know, and if the circumstances change they have that option. Do you, in truth, overall not see that this is better than what we have got?

**Mr Slan:** I have tried to make it clear, I think support deduction is better than what we have got. I have some concerns about the mechanisms that are being proposed.

**The Chair:** Thank you very much, Mr Slan.

**Mr Elston:** Mr Chair, I would like the record to indicate again that I would have had some questions of this witness, except that you have decided that you will restrict our access. This gentleman represents the pre-eminent group of people who practise in this area in Ontario, and you are restricting us from seeking out the type of advice we need to perform our duties here. I find that totally unhelpful and I do not know how we can impress upon you, as the person who keeps the clock, that we have to be given some latitude to find out what it is like practising, the effect this is going to have on the people.

**The Chair:** Mr Elston, with all due respect, Mr Sorbara took more than your caucus's allotted amount of time.

**Mr Elston:** Listen, five minutes for the people who do all the work in this province in family law—

**The Chair:** Excuse me, sir.

**Mr Elston:** —is absolutely insane. If you think this caucus is only going to have five minutes—

**The Chair:** Excuse me, sir.

**Mr Elston:** —to investigate from these people what is going on in the—

**The Chair:** Excuse me, sir. We have had an agreement about the timing for witnesses. If your caucus is not in agreement, then you should have expressed that through your representative on the subcommittee.

**Mr Elston:** I raised that yesterday. In fairness to me, I raised that yesterday, and you said you would think about it and that you would be fair and flexible. It is not flexible and it is not fair to have five minutes for caucus to talk to the people who do all the work in family law in the province. These people can tell us. This particular presenter gave us some views on some sections, but there are other questions that we could take a look at.

**Mr Fletcher:** On a point of order, Mr Chair: Is this a challenge of the decision of the Chair?

**Mr Elston:** I am not challenging anything. I cannot win a challenge.

**Mr Fletcher:** Then stop arguing.

**Mr Elston:** You guys have got six people and you are going to shut us down.

**Mr Fletcher:** On this point of order, Mr Chair: We set the agenda and we voted on the agenda. Am I correct?

**Mr Elston:** We did not vote on the agenda.

**Mr Fletcher:** From the subcommittee?

**Mr Elston:** I raised this as a point of order yesterday, and you said you would take a look at it and be fair and flexible in the time that we were given to look at the presenters.

**The Chair:** And so far, sir, we are over time due to your caucus on two occasions. Listen, if you and Mr Sorbara wish to use the time—you are complaining about not having enough time to ask questions, but your colleague asked them. The previous time Mr Sorbara was—

**Mr Elston:** Listen, you, Mr Chair, are enforcing a gag on this committee. That is what this is.

**The Chair:** Excuse me. Mr Slan, thank you very much.

**Mr Elston:** Mrs Cunningham raised the same question yesterday about the adequacy of time. I think it is outrageous that the practitioners in here do not have the time—

**The Chair:** With all due respect, if you are wishing to challenge the amount of time that we have available to us, that is something that could have been taken to the subcommittee.

**Mr Elston:** The process here is that the committee is supposed to have ample time to take a look at the material presented by presenters. There is nowhere close to ample time to take a look at the material which was just presented. How can we understand the effect if we cannot look into the material that this presenter has presented to us and also expand on his experience and knowledge and bring that in here so that we can find out whether the provisions that are being presented are going to be effective and worth while? That is my only point. I just think you

guys are being really naïve if you think you can get enough information from presenters by saying five minutes per caucus. That is absolutely astounding. I am sorry, but it is astounding.

**The Chair:** It will also be less than five minutes if we try to keep to our schedule, sir.

**Mr Elston:** Do not threaten me.

**The Chair:** It is a matter of reality. We have a timetable to hold to. We have a good number of witnesses.

**Mr Elston:** I wish to raise a point of order with you, Mr Chair. The point of order is this: In the committees, sitting beside you should be either the Attorney General or his designate; in fact a representative of his office should be in his or her chair beside you to take the political questions, because it is quite clear that the political questions cannot be handled by the representatives of the ministry. I usually see that the—

Interjection.

**Mr Elston:** No, the parliamentary assistant is not sitting in the chair beside the Chairman. He is a member of the committee and has actually refrained from answering a previous question, although he said, "We will consider something." He should be in his position or the Attorney General should be in his position beside the Chair of the committee to field the political questions and act as a help to the committee.

The point of order is that we are underrepresented in this committee and that there is no representative actually holding the fort for the government, for the cabinet, for the executive council as the parliamentary assistant should be. I would ask that you take that under advisement and that in fact you will instruct that the minister or his parliamentary assistant take a chair beside you.

**The Chair:** Thank you, Mr Elston. I will certainly confer with the clerk on that. Mr Wessinger is free to assume either chair he wishes to, the one he is presently in or this one. I will leave that to him and will consult with the clerk further on this matter. I have viewed a number of videotapes from the last session of your government, sir, and noted in many of those videotapes that in fact the parliamentary assistant was sitting in the exact same spot Mr Wessinger is now.

#### ONTARIO SARC NETWORK

**The Chair:** I would like to welcome the Ontario SARC Network. If you could introduce yourselves into the microphones, first off, we have approximately half an hour and usually that time is divided up—It is entirely your own, but usually it is divided up into half of that time perhaps for presentation and half for questions from the various caucuses, and those questions are rotated among the three caucuses. Thank you very much.

**Ms Harris:** Thank you. My name is Jennifer Harris and I am the co-ordinator of the Ontario SARC Network. I am here, more or less, as a resource person to this presentation because Cheryl Milne, a graduate student who is placed with the network and is our expert on this issue area, has prepared this brief and will read it into the record.



I will field any general questions about the network that might be applicable, but this is her issue.

**Ms Milne:** I assume the brief has been distributed. I am just going to walk people through it. It begins with a description of what the Ontario SARC Network is, for those of you who are unaware of this group. It operates within the organizational structure of the Ontario Prevention Clearing House and has continued the work of the 1989 SARC public awareness campaign. It has been involved in a number of activities which support social assistance reform in Ontario within the academic, voluntary, faith, consumer and advocate sectors of the community.

Underlying much of the network's advocacy work is the support of the recommendations contained in the Social Assistance Review Committee report, *Transitions*. *Transitions* contained a number of recommendations in respect of the integration of family law and social assistance legislation as well as the co-operation between the Ministry of Community and Social Services and the Ministry of the Attorney General.

Most pertinent to the discussions surrounding the issue of the enforcement of support orders are the recommendations for guidelines for the calculation of child support and the exploration of the feasibility of adopting a public maintenance advanced system similar to a pilot project which is being conducted in the state of Wisconsin. There are also similar programs in countries such as Finland, Denmark, Sweden and there is a version in Switzerland, so it is something that is not new in the area of social policy.

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I have reproduced here in my brief a number of the recommendations that are contained in *Transitions*, the first one dealing with the co-ordination between the Ministry of Community and Social Services and the Ministry of the Attorney General in dealing with private support obligations and their relationship to social assistance law.

The second one is that support should be given to research that assesses the impact on family members of recent family law legislation dealing with property division and support, and the guidelines that I spoke of earlier.

The third one is that measures should be taken to help lawyers and judges become more aware of the interrelationship between the private and public support systems and of the importance of support awards to women and children who receive social assistance; and the last point that I have included in here is the monitoring of the Wisconsin child support assurance system.

The Ontario SARC Network supports these recommendations. Changes to our family law system in Ontario must take into consideration the plight of single parents currently making up the majority of family benefits case loads. There is in effect in Ontario a dual system of family support, one private and one public. The primary system for the support of single-parent families consists of the public enforcement of the private arrangements between former partners under the Support and Custody Orders Enforcement Act, SCOEA.

The backup to this system has been the completely public response of social assistance. It has been pointed

out many times that the two systems lack integration, that family law principles of independence and self-sufficiency are often negated by the principles inherent in our social assistance system, which emphasizes dependency. Furthermore, both systems have been shown to be lacking in their ability to meet the financial needs of children in single-parent families.

It is hoped that the proposed legislation change under Bill 17 is intended as a first step only in the fulfilment of the government's need to respond to the plight of single-parent families in the province. Strengthening the enforcement procedures for support obligations, although in itself a pressing need, is not a complete remedy to the levels of poverty being experienced by single-parent families. Child support awards in Canada generally have been called a national scandal. A more comprehensive approach must be taken which integrates support with social assistance. The premise of this brief is that the changes announced are insufficient in their response to the level of poverty experienced by families.

Statistics show that it is the women and their dependent children who suffer most financially on family breakdown. Over 45% of family benefits recipients in Ontario in August of 1990 were sole-support parents; 85% of these parents are women. In 1987, 57% of Canada's single-parent families headed by women were living in poverty, compared with 8% of two-parent families. Hardest hit are young mothers who are most likely to have young children and therefore child care responsibilities which hinder their chances at employment, and 69% of single mothers aged 25 to 34 live below the poverty line.

Recent statistics from the Ministry of Community and Social Services indicate that over 13% of Ontario's children are living on social assistance. The largest single group of social assistance recipients in Ontario on a case basis are single parent families.

Under SCOEA approximately 28% of orders filed with the enforcement office are collected on behalf of the Ministry of Community and Social Services, for a total of \$30 million. The current social system in Ontario provides that any support payments are deducted dollar for dollar from the benefits payable to the recipient of social assistance. Although this is currently under review, it becomes quite clear that the proposed changes to SCOEA will not have a direct effect on the financial situation of these women.

What these statistics suggest is that the enforcement of support orders and agreements should not be seen as a panacea. Any discussion of changes to family support legislation must address the issue of quantum. Furthermore, increasing support orders, although absolutely necessary, will not significantly improve the economic situation for many sole-support mothers because of the increased costs of paying for two households upon the breakdown of the family. In other words, the father just cannot afford to pay the support amounts necessary. So social assistance legislation must also enter the discussion where the issue is family poverty.

Child support under both provincial and federal legislation is to be provided in accordance with need to the extent that the parent is capable. The implementation of

this guiding principle has tended to place more emphasis on the ability of the parent to pay than the actual needs of the child. A study in Calgary showed that child support orders were inadequate and bore little relationship to the actual costs of raising children. Similar statistics from Ontario were found under the Divorce Act with the recent research project done by the Department of Justice. The average child support award in the study noted here was considerably less than half the actual expense, with or without day care. The result is that the custodial parent must absorb the difference.

Adequacy in the amount of support payments is not addressed in an alternative which strengthens the enforcement legislation only. Without an objective method of calculating support within the governing legislation, heavy reliance is placed on the individual agreements made between the spouses. The immediate and often long-term needs of dependents are not necessarily addressed. A support debtor without means or who has cleverly hidden assets may be absolved of support obligations to the detriment of his dependents.

In the United States, under the Family Support Act each state is required to implement a standard calculation for child support within legislation. In the state of Wisconsin, the judge who deviates from this calculation must give written reasons. Thus, judicial discretion is not eliminated but clear direction is given which has its basis in an objective standard of the financial needs of a child.

In conclusion, we support the recommended changes contained in Bill 17, because the basic program under SCOEA as a system of enforcement is felt to be sound. By increasing the effectiveness of enforcement, the government establishes the infrastructure for a more comprehensive policy, such as a public maintenance advance system. If the ineffectiveness of the current system is not addressed immediately, public confidence in an otherwise conceptually satisfactory enforcement policy will be eroded as creditors resort to other means.

Estimates from a study of the Wisconsin pilot project suggest that automatic deductions increase child support payments by somewhere between 11% and 30%. However, the researchers warned that there was no logical or empirical basis for believing that routine income withholding was the single most important reform of the American system. It must be kept in mind that this reform was part of a package which included the advance payment system.

The care for children must be seen as a joint responsibility between spouses as reflected in support obligations, and as a joint obligation between parents and the state as reflected in sufficient public support for the economic needs of children. In summary, we make the following recommendations:

1. That the recommendations made by the Social Assistance Review Committee with respect to the integration of family law and social assistance legislation be implemented as soon as possible.

2. That a clear plan be developed for the implementation of an advance payment system within Ontario to provide financial security to children upon marriage and family breakdown.

3. That the legislative changes contained in Bill 17 be expanded to include such an advance payment mechanism.

4. That the Family Law Act, 1986, incorporate, either through regulations pursuant to section 69 or by way of amendment to the act, a procedure for the calculation of child support based on an objective assessment of the financial needs of the child. Thank you.

**Ms S. Murdock:** I have a quick question. This legislation being proposed is an enforcement and a continuation of what it was hoped SCOEA would do. What you are asking for, in particular the fourth recommendation, is that it would not come under this legislation; it would be different legislation. You realize that?

**Ms Milne:** Yes.

**Ms S. Murdock:** Okay. That is all. I have read Transitions, so I am familiar with it.

**Ms Milne:** The point I was making is that it should be seen as part of an overall policy and that it should not be taken in isolation.

**Ms S. Murdock:** In an ideal society that is the way it would be. It is just going to take time.

**Mrs Mathysen:** On page 5, you indicated some concern about the father's ability to pay, that sometimes fathers are impoverished. That seems to contradict what we have heard. So far we have heard that 85% of all these errant fathers have the disposable income. I was just wondering if you can reconcile that. It seems a contradiction.

**Ms Milne:** I do not think it is. The vast majority do have the ability to pay something. What I am saying here does not contradict that statistic. But what about those who cannot? What about the children who have fathers who cannot pay? There are increased costs in marriage breakdown, and they may be able to pay something, but it may not reflect the actual financial needs of that child, given the fact that you are now splitting the income between two households.

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**Mrs Mathysen:** In other words, this is sort of a crack in the legislation. We have forgotten about these children and need to take a look.

**Ms Milne:** These are the people on social assistance, to a great extent. What happens with the Family Law Act, with SCOEA, is that you end up forgetting about people who are on social assistance; it is legislation geared towards middle-income people, people who have assets, people who have a steady income, and those people on social assistance are forgotten about to a great extent.

**Mr Fletcher:** Just a question on recommendation 4 again, "a procedure for the calculation of child support based on an objective assessment of the financial needs of the child," not so much on the spouse's financial ability to pay. It would be more or less based on the needs of the child.

**Ms Milne:** The current situation provides, as I said in the paper, that parents are supposed to support their children on the basis of need to the extent they are capable of doing so. What has happened to a great extent, in terms of financial statements submitted to court and the decisions



overall, is that a lot of emphasis has been placed on the ability only. Things like debt payments, for example, are taken into consideration when the question is: Is that really relevant when you have a primary responsibility to pay support for your children?

What jurisdictions such as Wisconsin—or throughout the United States, because it is federal legislation—have done is set up guidelines based on the average costs of raising children. We certainly have those guidelines in Ontario. We find the social planning council has guidelines. There are guidelines out there. Why can we not put some of those in legislation as at least a minimum amount? If you are going to have to deviate from that, there should be clear reasons for that.

**Mr Carr:** I appreciate that one of the big concerns you have is making it all-encompassing to get the children out of poverty. Of course, we are all aware of some of the other recommendations. I was wondering, if you put this program in isolation, do you have any figures on how many children that will help push out of poverty? I know it is a difficult question, but—

**Ms Milne:** I am not sure I understand. With Bill 17 only?

**Mr Carr:** Yes. I appreciate that you are talking about long-term and all-encompassing. I notice the words you use are “first step.” Do you have any figures of how much this first step will help?

**Ms Milne:** No, I do not. I could say one thing, though, that even with the enforcement legislation these people on social assistance right now do not benefit from that, because it is deducted dollar for dollar. Those women who do have an outstanding support order being enforced through SCOE are not receiving any of that, so that is not lifting them out of social assistance in any way.

**Mr Carr:** Another quick question: We have asked some of the people the reason for some of the non-payment. There seems to be a big degree of variation. You hear some reports from Alberta that say 80% can pay. The people ahead of you from Dofasco say that 70% of the people cannot pay because they do not have any money themselves. Having worked and seen front lines, what is your perception of some of the reasons that the children are not getting the payment now? If you could make your best estimate of that.

**Ms Milne:** I do not know. People have probably said it before me. I do not really have that information in terms of statistics or hard facts. It has been my impression that people are able to pay something. Whether they could meet the actual needs, the 50% or greater of the financial needs of the child, I do not know. But the advance payment systems found in Wisconsin as well as in the Scandinavian countries involve an actual payment by the government. You may not receive all of it from the support debtor, for example. It in fact is a child's benefit, to a certain extent, payable only to single-parent families. It takes into consideration the fact that some parents cannot afford to make the payments, but it does not penalize children for that fact.

**Mr Carr:** In conclusion, you are saying you want to have a system where the parents will pay their share, but I think the line you used is that the state will be part of that to get them up to an acceptable level.

**The Chair:** Thank you very much.

**Ms Milne:** Thank you.

**The Chair:** Before the next presentation, I would like to make mention of the fact that there is a change in schedule. We are going overtime only slightly at this point. The presentation at 1:45 is not to occur at that time but rather at 5:15 on Thursday, so we will not be resuming hearings until 2 o'clock this afternoon.

#### ONTARIO ASSOCIATION OF PROFESSIONAL SOCIAL WORKERS

**The Chair:** I would like to welcome the presentation from the Ontario Association of Professional Social Workers. We have approximately half an hour, which is usually divided between your presentation and time for questions from the various caucuses, but it is your time to use as you wish. If you could, introduce yourselves into the microphone for the purposes of Hansard.

**Ms Dabroia:** I am Rachele Dabroia.

**Ms Chisholm:** I am Barbara Chisholm.

**Ms Mann:** I am Marion Mann.

**Ms Dabroia:** As Mr White said, we are here on behalf of the Ontario Association of Professional Social Workers. My colleagues have assisted in the preparation of this brief. As well, Beatrice Traub-Werner and Carisse Gafni helped to prepare this brief.

The Ontario Association of Professional Social Workers welcomes the opportunity to respond to Bill 17. By way of introduction and for your information, I will tell you a little about our association. We are a bilingual membership association incorporated in 1964. We are one of the 11 provincial-territorial associations of social workers belonging to the Canadian Association of Social Workers, which in turn is a member of the 49-nation International Federation of Social Workers. The Ontario Association of Professional Social Workers has 19 local branches in Ontario. Its mission is to assert the role of professional social workers, advance their interests and enhance their contribution to social justice. We have approximately 4,000 members. Our practising members have university degrees in social work at different university levels.

Our comments today will reflect the views of professional social workers who frequently work with children and separated or divorced parents subject to support and custody orders. In my presentation I will initially make general comments. Subsequently, I will delineate potential problems we have identified with this proposed legislation and then make recommendations.

We believe that Bill 17 addresses a very important and serious problem, and we support its objectives. The bill rightfully recognizes that the financial support of children by both parents is an obligation that does not end at the time of parental separation. As social workers, we believe that any legislation that directly impinges upon the lives of children should have as its primary consideration the best

interests of those children. It is our view that the proposed legislation endeavours to meet this goal.

We are aware that in some cases access visits and support payments become entwined in the ongoing parental quarrel. We unequivocally endorse the position that the issue of support payments be in no way related to the issue of access visits between non-custodial parents and children. Access is the right of the child, whereas support is the obligation of the parents.

The proposed legislation suggests mechanisms to ensure that parents who are financially capable and are under obligation to support their children do so.

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I would like to highlight part I, subsection 3c(19). It reads: "If an income source is required to make payments to the director's office under a support deduction order and the income source receives a garnishment notice related to the same support obligation, the income source shall make full payment under the support deduction order before making any other payment in respect of the garnishment."

We are in full support of this clause, as it makes the support of the children a priority over any other debt owed by the non-custodial parent.

Also, part I, section 3f reads, "An agreement by the parties to a support order to vary a support deduction order and any agreement or arrangement to avoid or prevent enforcement of a support deduction order are of no effect."

Again, we believe this clause is in the best interests of children. In some situations there may be an imbalance of power between the separated spouses. This may lead to a custodial parent agreeing to a variance in the support deduction order that might not be in the children's best interests.

Legislation related to the enforcement of support which is overly rigid may serve to exacerbate family quarrels, thus further polarizing the parties and placing them once again into the adversarial arena. With respect to this issue, we support the fact that the bill allows for flexibility, balance and fairness in the process of ensuring the payment of support. We believe part I, subsections 3d(1) (2) and (3), which deal with the issue of suspension of support deduction orders, incorporate this element of fairness into the process, while acknowledging that circumstances may certainly change in people's lives.

I will now go on to problems we have identified and recommendations we have formulated. We understand that the Support and Custody Orders Enforcement Act, which came into effect in 1985, resulted in an extensive backlog and millions of dollars being owed in support payments. Although Bill 17 would improve the situation, it will require careful administration. The proposed legislation places considerable onus on the debtor, presuming that he or she will act responsibly in informing the director's office of any change in circumstances, for example, a change in place of employment.

Difficulties may arise, however, in situations where debtors change jobs frequently. By the time the director's office is made aware of the change of employment, the debtor may have moved once again. We urge that the regulations address this problem in some detail.

The proposed legislation places a great deal of emphasis on the debtor's ability to read and write in English or French. For instance, part I, subsection 3c(15), addresses the debtor's duty to inform the director's office of any changes in circumstances. In addition, part I, subsection 3j(5) deals with changes in information of financial statements. As we live in a multicultural society, there are many individuals who are not proficient in English or French. There may also be individuals who do not have the capability in either reading or writing to co-operate with the required procedures.

We recommend that there should be an obligation on the part of counsel to fully inform the client in his or her first language of his or her obligations under the proposed legislation. Perhaps counsel should even be required to sign an affidavit to the effect that the client has been informed of his obligations in his first language. In cases where individuals do not have lawyers, we recommend that culturally sensitive and language-specific services be made available on an ongoing basis in order to explain the legislation and its obligations.

With respect to the issue of suspensions, Bill 17 addresses this issue. However, it does not fully delineate the way in which decisions will be made with regard to the granting of suspensions. We believe it is important to ascertain that the debtor is truly in a position of not being able to pay as opposed to simply choosing not to make support payments.

We recommend that an independent review mechanism be instituted in order to assess claims of inability to pay. This could be similar to the mechanism employed by the legal aid program. More specifically, the claim would be presented to an independent voluntary board. Following examination of the particular case, it would be the responsibility of the board to decide whether the reason for suspension of payments was acceptable and in keeping with the best interests of the child or children involved. We would see these procedures preceding any new court involvement, and in appropriate cases mediation of the issue may be indicated.

We recognize that Bill 17 cannot address all possible situations. However, the following examples of potential debtor problems should be clearly addressed in the regulations: situations where the debtor is on strike or laid off, situations where the debtor is a student receiving a student loan, situations where the debtor declares personal bankruptcy, or situations where the debtor is self-employed.

In addition the proposed legislation addresses court-ordered support deductions, but does not address situations in which non-court-ordered agreements have broken down. In those instances we recommend that copies of all formally signed separation agreements be filed by the parties' counsel with the director of the child and family support office, within 15 days of such signing. This would ensure that those individuals also have benefit of the proposed legislation.

Finally, the meaning of certain terms in the proposed legislation requires clarification. For example, in part I, subsection 3g(1), the difference in meaning between a support order being "terminated" as opposed to being



"withdrawn" is unclear. Also in part I, section 13a, the term "other means" requires definition.

In summary, the Ontario Association of Professional Social Workers applauds the government for undertaking this important proposed legislation. In particular we commend the government's efforts to give parents' financial obligations to their children a place of primacy before all other financial obligations. We also support the bill's attempt to ensure that access and financial support are not contingent on one another.

In closing, we recommend that the government give careful thought to the drafting of regulations, so that the implementation of Bill 17 reflects its original intent and objectives. We would be happy to answer any questions you may have, and Barbara Chisholm would be pleased to illustrate our points with any case examples if you wish.

**Mr Kwinter:** I would like to just explore a little bit one of the premises that is made on page 1 in their introduction. It seems to me that in the testimony we have heard, there are really three categories of defaulters, if you want to call them that: those who for whatever reason have denied any responsibility or do not want to take on the responsibility and say, "I'm not going to pay," those who cannot pay, and those who are in some dispute with their spouse, primarily as to access.

I find it interesting that you feel that access is the right of the child. It would seem to me that there are other parties that have a right to access, grandparents, parents, one of the other, and to suggest that they have no rights but that it is the child only who has the right to sort of accept access is a problem to me. I would just like to hear your rationale, if you really believe that this is so and why you believe this is so.

**Ms Chisholm:** I can answer that, if I may.

The point that is being made here is an attempt to reflect the spirit of legislation as it reflects the whole current family law issue around separation, divorce, custody and access. One of the major philosophical underpinnings is around the issue of access. This is not in any way—you are absolutely right, Mr Kwinter—to raise any query about the concern and the wish for contact with, for example, grandparents which is a really very concerned group around the current difficulties in custody orders.

The point, if we are trying to clarify, is that if we insist that access is a right only of adults, we provide no protection for the children where that access is not in their interests, because the argument can always be made, "This is an absolute entitlement of mine." You hear this argument a lot: "This is my child. I've a right to do this." The protection aspects of child welfare law have moved into this concern in family law because we are now, as you undoubtedly very aware, for example, in really serious, bitter custody quarrels.

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Now one of the new weapons that is being used is the allegation of sexual abuse of the child or children by the absent parent, so that the dilemma now is, how do we reconcile and balance the entitlements of all the people concerned? In recognizing that a child is entitled to know

and love and have contact with both parents regardless of the nature of the parents' quarrel with each other, that is not an absolute. That must be always placed within the context of the child's right, a primary right, to protection from harm.

In order to clarify the difference between entitlement and obligation, it is very important to understand those differences. Of course grandparents have rights and entitlements. Of course parents have rights and entitlements. But so do children and the issue we are trying to clarify here is that so much of our experience—I am a social worker in private practice. My particular specialty deals with the issue of separation and divorce as it affects children. What one sees frequently, frequently, frequently is the fighting that goes on and you can never tell, always, absolutely which starts first, but what happens is that if you cannot see those kids: "Okay, I am not going to give you any money for those children. I won't support those kids. You want money for those kids? You let me see those children." Or, "I can't possibly continue to support these children if I am never allowed to see them."

The two issues become very much embroiled with one another, and what we are suggesting here is that the separation of that issue, as reflected in this legislation, is very important in order to keep the thing clear in everyone's mind. We do not want to continue that kind of negative quid pro quo, "I'll pay if I see," or, "You will see only if you pay," which goes on in a great number of separation quarrels and divorce quarrels around the children and around support.

The obligation to support children should exist regardless of what the nature of the quarrel between the parents is and regardless of what, if any, orders may be in place. For example, you may have a situation where a non-custodial parent is under an order only to see their children under supervised conditions, or indeed to not see the children at all until certain other conditions have been met. That very drastic step may need to be taken in order to protect the children from harm, but it should not in any way obviate the ongoing responsibility to continue to meet a support obligation, and that is the point we are trying to make.

**Mr Kwinter:** I have no problem with that. Where I do have the problem is that this document is in circulation and someone takes a look at it and says, "The Ontario Association of Professional Social Workers says that access is a right of the child."

**Ms Chisholm:** Yes, you will find that this is reflected in legislation around the world, sir.

**Mr Kwinter:** I just do not think it should be exclusive on one side. I do think there are rights of other people to have access to their children. I am not in any way—

**Ms Chisholm:** Of course they do.

**Mr Kwinter:** —advocating that someone who is a child abuser should have unlimited and unfettered right.

**Ms Chisholm:** Of course not.

**Mr Kwinter:** The other thing I would like to ask is on page 4 where you talk about additional issues and you sort to lump four things together. I do not know whether they

are all negative and positive, like, "The debtor is on strike or laid off." What is your recommendation on that? "The debtor is a student receiving a student loan." "The debtor declares personal bankruptcy." "The debtor is self-employed." It would seem to me that you would want provisions to in some way alleviate the responsibility under the first three, and on the other one you would want to make sure some additional legislation is provided to be able to attach the income of someone who is self-employed. I would just like you to expand on that.

**Ms Chisholm:** I will just make a comment and then defer to my colleagues.

What we are trying to identify here are those parents whose work situation or life situation does not lend itself automatically to the structures proposed in this legislation, so that they do not get missed. There are very real issues involved, for example, with the self-employed person who is elusive, does not have a person at a payment office or human resource office or something who can make those reports to the director of such a program. There is nobody this person is accountable to. He is self-employed. He is on his own.

The issues of strike and laid off may very well mean for those not protected by large unions that the absolute available income for such an order shrinks. We want to make sure that there is recognition of these kinds of situations. A young parent who has gone back to school and is on a student loan basis: What kind of procedures could we think of for that young parent? Those people will not have, again, a reporting mechanism at their place of employment but there is an income. Maybe they are living back in their own family home again so that their living costs are very low. What mechanisms might we suggest to you to have access to those parents as well?

**Mr Kwinter:** If I can just interrupt, what I am trying to determine is, are you saying that if someone is on strike, it does not matter that if he is on strike, and that even if he does not have a union, there has to be some provision to get money out of him while he is on strike.

**Ms Chisholm:** No, it is the reverse.

**Mr Kwinter:** That is what I want to find out.

**Ms Chisholm:** It is the reverse.

**Mr Kwinter:** But it seems to me I sort of gathered that when you were talking about the strikers, but when you are talking about the students, are you saying that if a student goes back to school you want to be able to attach his OSAP loan, for example?

**Ms Chisholm:** We want to be able to explore one mechanism, are suggesting a mechanism for what procedures ought to be employed to make sure that if that person is capable of making a contribution to the support of his child, he does so or she does so—not just always a he; she does so; the parent does so. If it is not feasible, fine, it is not feasible. This is not punitive. What we are trying to do is be comprehensive and to simply point out that there are some life situations which do not appear to be readily touched by the present proposals. We are just suggesting that the regulations consider procedures that would address these kinds of situations as well.

**Mr Kwinter:** We had someone from the family bar association and it seemed to me that he addressed it properly, that when the order is made all of these situations are taken into consideration, and if the situation should change then it would seem that the payer would go and get a variation of the order.

**Ms Chisholm:** Move to get a variance.

**Mr Kwinter:** Yes, to get a variance and really it would seem to me to be redundant to sort of spell that out. The practical situation would make that happen.

**Ms Chisholm:** I do not want to be the only one answering here, but there is experience that indicates that does not happen. This touches on another part of the point we are trying to raise here. The assumption that you will get that kind of co-operation and that the program will get that kind of co-operation is something that needs to be carefully thought through. In our experience, my colleagues' experience, my own experience, that is not always so. You may have a parent who wishes to be a responsible paying parent. You may have a parent who does not wish to be a responsible paying parent. You may have a parent who is still very, very angry and still wishing to intimidate the previous spouse.

All of these situations exist and we are simply saying this is an excellent proposal and we want to make sure it is broad enough that it will incorporate those we think it would miss otherwise, so that the spirit and the intent of the legislation has an opportunity to touch at its broadest possible base.

**The Chair:** Mr Sorbara, the caucus has run out of time but this is the end of the morning, so please one or two if you could.

**Mr Sorbara:** Oh, how kind of you, Mr Chairman. I want to begin by congratulating the association on its brief and apologizing for the fact that I was not here for the first few minutes of it. I would like to follow up on Mr Kwinter's questions, and to begin with, his question of how you deal with the debtor who is on strike or on layoff. What would your suggestions be? Should there be no obligation during that time or what?

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**Ms Mann:** I think this is why we presented it in this way. We really do not have enough information to know how these issues should be addressed. I agree that number four, "The debtor who is self-employed," is in a different category to the other three who would appear to be—possibly not with the bankruptcy one, but the other two appear to be more short-term. We were particularly concerned about the self-employed—

**Mr Sorbara:** I can understand that.

**Ms Mann:** —because there are no checks and balances available.

**Mr Sorbara:** The reason I asked that is of course because in a family situation, when everyone is living together, when there are layoffs in the family everyone suffers. The kids do not get the new shoes, the husband does not get perhaps to go to the baseball game, or maybe the mortgage does not get paid and the house is lost and



you have to move into an apartment and everyone suffers. But under the circumstances of a court order for support, the obligation continues and arrears occur and then SCOE has to put those people in the category of defaulters, some of whom are very happy to default and some of whom really feel badly about it.

I want to go on to the question of access as well, because I think you described in your comments the realities of the situation out there. I think what some of the people of this province are a little bit concerned about is that this government, the new government, has continued to proceed with this initiative which was started under the previous government, and yet has abandoned those minimal access enforcement issues that were contained in Bill 124, so I think some people feel rather abandoned and at the same time rather hard-pressed through this legislation.

You seem to be very supportive of it and I am glad to hear that. There is some suggestion that what we are really doing here is simply improving the enforcement mechanisms of an agency that needs to do that, to recover social assistance funds which it feels the government should not be paying out and to streamline its enforcement procedure. Do you think that this legislation will dramatically change the dynamic out there that you experience as a social worker in private practice, and if so, how?

**Ms Chisholm:** No. I do not think it will, because what causes people to quarrel and marriages to break down has nothing to do with legislation. It has everything to do with the meaning of their relationship to each other and the way they have behaved with each other, the maturity or lack of, and the impact of responsibility, all of those issues.

What we are endorsing is a position that recognizes that there are structures needed in order to establish some kind of resolution when there continues to be bitterness and anger or misunderstanding. Certainly in my own practice experience—I do a great deal of work with assessments but I also undertake mediation and I also do counselling, either separation counselling, marital counselling or post-divorce counselling—one of the issues we begin to recognize is that some families, some couples, can in fact be helped to negotiate an agreement that they will live with, but not all couples can. Mediation is not an absolute panacea. It is an enormously important tool, but it is not a universally applicable one.

There are—I believe I speak for my colleagues in the association—and there will always be situations in which a more formal, authority-based structure is going to be necessary in order to ensure that people meet their obligations to their children. One of the major collision points in that situation arises when a former spouse, following divorce, remarries and has a new family. You will then find considerable tension building in many cases between his now—and it is usually a he, and I am just using that to define the problem—when he now says, “I have an obligation to my now family.”

**Mr Sorbara:** “—and I would like to see the obligation to my before family shrink or disappear.”

**Ms Chisholm:** That is right, and there is often a wish that the obligation to the before family could shrink. Exactly.

One of the mechanisms that works sometimes is to mediate that new situation, depending upon what the mother's new situation is. However, if that does not work, you need to be able to turn to a structure in which, on the basis of adequate and full disclosure and information as Mr Kwinter refers to, orders are imposed on the debtor.

**Mr Sorbara:** I understand that. I just have one final question, if I might. I think we agree that there will be some circumstances where a husband, and generally it is the husband, faced with an automatic order for deduction, will go so far, because of his anger, as to quit his job.

**Ms Chisholm:** Yes. It has been done.

**Mr Sorbara:** I think there will be other circumstances, and I think you would agree—tell me if I am wrong, based on your experience—that there are some husbands who are delighted to have an automatic deduction order, because they want to pay and it is easy and it is simple and they never have to see it.

**Ms Chisholm:** That is right.

**Mr Sorbara:** And then there are the people in between. This legislation says that everyone who receives a periodic payment will be subject to an automatic deduction order.

**Ms Chisholm:** Everyone who is under a court order.

**Mr Sorbara:** Oh, it has to be a court order.

**Ms Chisholm:** That is the point that we are trying to make.

**Mr Sorbara:** Or everyone who has a domestic contract that is enforceable under the law can use the procedure, as well.

My own feeling personally is that there ought to be leeway so that those who can deal with this outside of SCOE and an automatic deduction, those who seek either the privacy or the honour or something else of not using the system could be freed from that, not based simply on wealth but based simply on something else. What is your view on that?

**Ms Chisholm:** I agree. We agree that there should be flexibility and the place for private arrangement, but one of the parties to that original private arrangement contract needs the potential of protection if, on experience, the other agree defaults, and that is what we are trying to address there.

**Mr Sorbara:** I could not agree with you more.

**The Chair:** Mrs Cunningham.

**Mrs Cunningham:** Mr Chairman, you may be surprised, but those were my exact same questions.

Interjection.

**Mrs Cunningham:** Well, you are learning. This is so refreshing some days. It is encouraging to see us have the same concerns. I just want to thank you for your responses and for the work you have done.

The reason I was going to ask a question is because you opened your brief by saying that “legislation related to the enforcement of support which is overly rigid may serve to exacerbate these family quarrels,” which is my great concern. When things are going smoothly now out

there in the real world and people are getting along, you and I in our work—I am a former social worker as well—do not meet those people, and there are neighbours down the street. At certain times in their relationship when someone all of a sudden gets angry because somebody will not pay the tuition of the college kid who may be able to pay his own, then goes down and says “This is what we are going to do,” I can see us having a real problem. So we have been looking at some amendments. I may get back to you with regard to our amendments, if that would be fair for us to do.

**Ms Chisholm:** That would be fine, Dianne.

**Mrs Cunningham:** Thank you very much.

**Ms Chisholm:** May I just make one other comment too that we did not add. When this legislation is finally through third reading in whatever form, it will be important to consider modification of the Wages Act to be consistent with it so that the Wages Act is not inconsistent with the priority of the debt for the child, because the Wages Act at this point now sets us a ceiling of 50% in relation to other obligations. We just want to make sure that you are aware that there may be a conflict between those two pieces of legislation and we think this should take priority.

**Mrs Cunningham:** That is correct. The other one that I would expect that you would like to comment on is the need for the more supervised access programs across the province.

**Ms Chisholm:** Absolutely. That is a whole other subject which the government is addressing and which we will certainly be here to stroke and say, “Absolutely; very, very urgently needed.” My colleague Ms Dabro is very actively involved in that at the moment; has been for some years, as you know.

1210

**Mr Carr:** I just wanted to personally thank you, because I know working on the front lines must be very, very difficult in handling all these situations, and we really appreciate your comments.

I was just wondering, and we talked a little bit about access, hearing from somebody who is on the front line, let's use the case of a father this time who says that he does not want to pay because he does not get access. How do you handle that? And how are you going to handle that with this legislation? It is very, very difficult, and I was just wondering if you could relate to the committee how that is done.

**Ms Chisholm:** First of all, those situations would come to the attention of someone like myself 99% of the time through the office of their lawyers. So the lawyers have attempted to negotiate some resolution to this and have been unsuccessful.

There would be a request perhaps for mediation, which is why we have included this, in which someone like myself or my colleagues would sit down with both parties at the same time and attempt to work out a compromise arrangement that each can live with which is fair to the needs of the children.

The problem is, as I indicated in discussion with Mr Kwinter, not everyone can use mediation. Mediation, to be effective, requires the willingness to compromise and some people are absolutely not willing to compromise. In those situations, I think the lawyer might ask if I would or my colleagues would counsel his client or her client.

**Mr Carr:** Is that a large percentage that are in that category, would you say?

**Ms Chisholm:** No, I would say not. The degree is in the problems they cause and the problems they create. Really intransigent, really bitterly angry people can be equal to 10 other cases in terms of how difficult they are to negotiate with, how difficult they are to troll into any kind of relationship so that you can begin to get at what in fact is behind the rage. And the issue indeed may not be money at all. The issue may be quite something else, related to the circumstances surrounding the end of the marriage for example, and the money has become the avenue for the anger. So counselling, if it is feasible with the very, very intransigent parent or client, might be again—failing that, litigation is resorted to by counsel on both sides.

**Mr Mills:** Thank you very much for your presentation. I found it most interesting. I suppose when I have read this proposed legislation, one of the potential administrative nightmares that I have come to grips with is when the debtors change their jobs and you can never catch up with them. You know, it has muddled around in my mind, what are we going to do? What sort of regulation are we going to put in here to come to grips with that? I was quite interested when I read your presentation that, lo and behold, you have the same ideas in your head.

Have you folks thought of what regulations you would like to see that we should look at to address this problem? I do not mean to put you on the spot, but I am trying to get some input, how it would help me.

**Ms Chisholm:** If we knew how to walk on the water, we would be busy doing it in another part of the world right now. I think the mechanisms at best will be limited and faulty. There are always going to be deadbeats. There will always be people who will spend their energy defeating the system rather than just riding with it. No legislation is ever going to solve all of the possible As, Bs and Cs that come in under it.

One of the things that I was concerned about, and I guess we cannot really do anything about it, is that the personnel officers or the payment officers in businesses and industries are now going to have yet another piece of paper to make out on behalf of all of their employees, and they are going to greet this legislation with great joy.

But we attempted to try to get at some of it through the suggestion that if the couple have lawyers and it is a non-court-ordered agreement—they have agreed to get along with each other and they have a private agreement; everyone should always be entitled to arrive at that—that private agreement, a copy of it, be simply filed with the program, not for action, but simply to be there in case.

As it is now, the court clerks must file all orders of support that are made in courts, in family or county or courts of general practice now in Ontario. They automatically



now have to be filed with SCOE and they are there. So we are saying there is already a pattern for that in place. Why do we not broaden it? Why do we not ask counsel secretary to type up another copy of the signed agreement or run it off on the fax machine or run it off on their Xerox, and automatically have to report that to the new program? Where it sits in a file, it may never, never be touched again. These two people may in fact honour their agreement, and the children grow up and are fine. The point that Mr Carr makes is an important one, that we do not see a lot of those in social work. We do not see the people who do not need help; we see the people who do.

**Mr Mills:** Who do, exactly, yes.

**Ms Chisholm:** But this would be at least a mechanism and it would be incumbent upon counsel to inform their client that this must be done, just as it is now incumbent upon counsel to inform their client who wants a divorce of the counselling services available to try to save the marriage before proceeding with an action for divorce. So this would become automatic. It at least would get some part of that.

The person who skips town or who skips from job to job or who deliberately gives up work is harder to discipline. We have found some ways of managing the person who wanted to get rid of a lot of property holdings when he saw the separation agreement looming, and we have now been able to give orders refraining from the disposition of assets. I do not know whether we know how to, and whether we could, figure out a system to give an order so that you cannot dispose of your current income, because I think the civil libertarians would have a lot to say about that, and quite rightly.

So I do not know. I think what we are suggesting is, we have identified some groups. I had a situation I was trying to mediate. This man is in construction, which is notoriously flexible and related to weather. He was working for a non-union employer. He and his little group were unemployed or down to a day and a half a week because there were strikes in other parts of the industry which supplied parts and since they could not get the parts, they could not do the work.

He was cut back to a day and a half a week. He is married and has another child. He is a very responsible parent. He wanted to mediate with his former wife a reduction in the immediate monthly payments since he did not have that money coming in and there was no pay coming to him at all except this very drastically reduced amount, but said: "If there are big expenses like her first communion dress, let me know. I want to help with that. I will be able to do that kind of thing, but I need time for the

monthly kind of arrangement." She was totally unwilling to give him that flexibility, and that is very unfair. The mediation was unsuccessful because we could not bring her to a point of agreement. Unfair, but there it was.

**Mr Mills:** Thank you very much. I guess there is no magic solution to this problem.

**Ms Chisholm:** No, I do not think so.

**Mr Mills:** May I say one thing—I realize it is getting on to lunch time—about the access visits. I have a constituent who came to me the other week, and it is a very sad case in that there is access to her previous husband and the daughter hates going there. But she said, "If I stick in my toes and say we do not want this traumatic upheaval every weekend, the ex-husband will then say, 'Well, I am not going to pay you.'"

I firmly believe that the access is the right of the child and, you know, she comes to me. What am I going to do? It is a real quandary and it is heart-wrenching when people come to a politician to sort of rule on who is right and who is wrong.

**The Chair:** I think you have posed your question. I realize this is a case, a related question.

**Mr Mills:** Okay, yes. I just wanted to discuss that.

**The Chair:** Nevertheless, we have gone way beyond time. I am wondering if you could answer it fairly briefly. I appreciate the difficulty.

**Ms Chisholm:** One of the issues that we do not want to appear to be doing is ambulance-chasing in any way, but I would urge all of you who have constituents who come to you with these questions to be in touch with the association that can give you the names of social workers in either agencies or private practice who are experienced and skilled in assisting in the resolution of these dilemmas.

As I indicated before, sometimes the money/access issue is not the real issue; it is a smokescreen for what is really going on. If you address only the money issue and the access issue, as critical as they are, you may miss what is continuing to keep the fight going, so you need professional assistance in exploring that and trying to resolve the real quarrel.

**The Chair:** Perhaps, for a specific suggestion, Mr Mills, you could approach Ms Chisholm in the hallway.

**Mr Mills:** I am just trying to get an insight—free advice.

**The Chair:** Thank you very much for your presentation. We are adjourned until approximately 2 o'clock this afternoon.

The committee recessed at 1222.

## AFTERNOON SITTING

The committee resumed at 1403.

**The Chair:** I would like to call the committee to order. There are a number of announcements made at the outset. First, in terms of scheduling, the Assaulted Women's Helpline this afternoon is cancelled. That time, I would suggest, should be used by the subcommittee members, one of whom unfortunately is absent, to discuss the scheduling for next week subsequent to our discussion last evening. If you could mention that to Mr Sorbara when he arrives, the subcommittee could meet immediately after the committee's proceedings have finished.

There are several other points. The clerk has produced and I believe has circulated some of the reports that were requested, the report from Alberta, the estimates, and she also has a copy of the video from the state of Florida and posters which are being prepared by the SCOE administration. We only have one copy of the video, so if committee members wish to use it, please ask the clerk; take it with you and return it whenever possible. Again, there is only one copy of the posters, so you could take a look at them here as opposed to taking them away with you.

One other brief announcement is the presence of Mr Wessinger. I apologize to the committee for not having mentioned that he is the parliamentary assistant to the minister responsible for this legislation. Mr Wessinger has full freedom to sit wherever he wishes to in this committee. He has chosen to sit here. I understand from the clerk that he could, however, sit in any chair he wishes.

**Mr Wessinger:** I would like to raise a point of clarification on one of the earlier submissions, the chamber of commerce submission. The impression was left that under the support deduction provisions more than 50% could be deducted. In fact, the maximum under the Wages Act and the new legislation would be 50% unless there is an order made under the act increasing that amount. There will be a clarification submitted to all committee members specifically setting out the provisions.

CANADIAN FEDERATION OF  
INDEPENDENT BUSINESS

**The Chair:** I am privileged to welcome Linda Ganong from the Canadian Federation of Independent Business. Ms Ganong, I believe you have made presentations in the past. You have half an hour. You can divide that time as you wish. After your presentation, many of the committee members may wish to ask questions of you. Please go ahead.

**Ms Ganong:** I will try to keep my remarks as short as possible to leave ample time for questions.

I want to say first that about three quarters of our Ontario members do support the concept of this legislation. They are in favour of a direct deduction system for child support. They understand the need for it and they see the realities of the situation out there. What I mostly want to talk to you about is the implementation of that concept, the places where the act could be a little more smooth, make

things a little easier for the small business community out there to comply.

Members of the committee probably know that Ontario is a small-business universe: 97% of firms in Ontario have fewer than 50 employees and 75% of them have fewer than five. The big majority is really tiny little firms with four employees or fewer, and compliance can be a real problem for those kinds of firms. This act needs to be as simple as possible so there is no burden on those firms so they can comply with their obligations under the law.

The other point I want to stress is that small businesses are not big businesses. It seems simplistic, but it is something that is often overlooked. When we think about business in the province, we often have a picture of General Motors or IBM or Bell or any of the big businesses; that is what we think of when we think of businesses. Small firms are just not like that. They are not structured that way, they do not operate that way. They are a completely different kind of entity. So when we are legislating, it is really important to keep in mind that the vast majority of firms are not our typical picture of business.

And the things we think business can cope with without any problem are actually going to cause problems for the vast majority of firms. The little tiny ones especially, the three quarters that have fewer than five, do not have sophisticated systems. They do not have streamlined systems, they do not have specialized personnel, they do not have a lot of high technology. Their owners tend to work hard and for less pay than most salaried employees. Actually, we have just brought out a study—I do not know if you have received it yet—that shows that the average small-business owner works harder than salaried employees and earns less than \$30,000 on average, which is much less than you do and I do probably. These people are not wealthy people.

And in the smallest firms, particularly the ones with fewer than five, the owner is the one who is carrying all the functions of the business, so he or she is doing payroll, accounting, as well as marketing, sales, managing the production and just basically making the business run. That again highlights why it is so important to try and keep the implementation and the mechanism of this act as simple as possible, so that owners of that size can cope with it.

Members of committees who have heard us here before will not be surprised to hear that the number one and number two problems for small business in this province are, first, the total tax burden and, second, the burden of government regulation and paper burden. At the back of our brief I have appended a chart which graphs the major small-business concerns from our survey starting in July 1988 until September 1990, and it has not really changed since then. Total tax burden is just getting worse and government regulation and paper burden is right up there as number two.



1410

One of the problems with tax burden is that our tax system right now is fairly discriminatory against the smallest firms. We just brought out a study last fall that showed that, compared to four other jurisdictions in Canada and five US jurisdictions, Ontario's tax system is the least competitive. That is across all levels of business but it is particularly hard on the small businesses because of the prevalence of payroll taxes and fixed property taxes. So these people are being squeezed on their bottom lines anyway, and then when you take a heavy compliance or administrative burden, it makes it that much more difficult.

In terms of compliance and administrative burden, it really breaks down into two components. One is the pure, out-of-pocket administrative costs, what it actually costs the business to comply with a new obligation under the law. The second is a more general cost of compliance, which is opportunity cost, where the owner is busy complying with the new law and therefore cannot use his time in the interests of other parts of the business. Those opportunity costs are impossible to calculate. I wish I could tell you what they would amount to, but I do not really know even where to begin. When you have a small firm, even a firm with fewer than 50, where the owner is really doing the bulk of the work, when the owner is pulled away from the other tasks of the business to do administrative tasks I do not know how you can possibly calculate what the loss is to the business. But it is there and it needs to be recognized and minimized if possible by simplifying the system, by making the system itself easy, quick, smooth, streamlined, so that the amount of time the owner has to spend understanding it and actually complying with it is as little as possible.

With regard to the actual out-of-pocket expenses, what it actually costs a business owner to comply with a new obligation such as this in terms of cutting the cheques and doing the extra payroll work and sending the money in and that sort of thing, what we would recommend to cover those kinds of costs is some kind of modest compensation. It does not have to be a lot. The retail sales tax in this province is one of the best examples of that kind of compensation. Ontario is actually a leader in that field right now. Ontario leads the way for all the other provinces in compensation to vendors under the Retail Sales Tax Act. Vendors who collect sales tax for the province and are doing a service for the province get some small amount of compensation every year just to make up for the fact that they are running into costs.

We are recommending that some kind of compensation be implemented in this act as well. In some ways it is almost more important to recognize the work that small-business owners are doing than actually to try to cover the costs, because you probably will not be able to cover all the costs and they do not really expect you to. But in order to avoid engendering a lot of resentment about being the unpaid slaves of government, doing an obligation that really is not their obligation—it is a recognition of the fact that they are out-of-pocket and are doing some work. Some kind of modest compensation would go a long way to spread a lot of goodwill.

It is possible that it could be arranged that it would actually come off the payer's pay, which would be the fairest way of doing it because the payer would otherwise be the one who would have the obligation. It would be the payer that would have to pay for the cheques and the envelopes and the postage and all that, because that is where the responsibility really lies. If the employer is taking over that responsibility, I do not even know what it would work out to, perhaps \$50 a year or something like that. That would cover those costs and make the small-business owners feel their concerns were being listened to and that they were not being asked to bear the whole burden.

In terms of some changes to the actual mechanism of the act, we have mentioned a few of them in the section of our brief called "details of implementation," which starts on page 6. A lot of these are not major changes, but they are the kinds of things that can really make a difference when you are a small-business owner. The fact that the act allows for a support deduction order to be binding on someone who is not named in the order makes sense, because it means you do not have to reissue the order every time the employee who owes the obligation changes jobs.

It could be confusing for small firms. They get so much mail from the government and a lot of it they consider to be junk mail. A lot of it seems to be a mistake or does not make a lot of sense to them. So getting a support order that does not name them in the order as an income source might tempt them to think, "Government screwed up again, sent it to the wrong address," and chuck it in the garbage.

So we are suggesting that it is somehow brought to their attention that they are still bound, that they need to check to see if the person named in the order is in their employ, and in that case they would be bound. Simple language right up front, maybe big letters or bright colours, something that is going to alert them to the fact that this is not necessarily an error but something they need to pay attention to, would really help a lot. Otherwise, you may find they are inadvertently in breach of the law without really intending to be just because they—again, lack of personnel. The owner coping with the volume of mail needs to go through it as quickly as possible. So some kind of notice would really be helpful.

Also, the section about the amount of time after which an order is deemed to be served does not really take into account the realities of our postal system. I heard from a member the other day that he had not received something we had mailed to him six weeks before. We cannot really trust the postal system these days. It is just an unfortunate reality, and five days probably is not long enough for the bulk of what is going to be delivered in this country. Especially with anything that is going to be delivered before a long weekend, say on a Thursday, that would count as Tuesday and probably it will not be there by Tuesday.

You might want to take a look at, first, changing it to working days so that you are actually giving the post office those number of days to deliver it; it is not going to do anything on the weekends. Second, seven working days might be a more realistic assumption of how long the mail

will actually take to get there. Again, you do not want to handicap these people without need.

One of the major inconveniences this legislation contains is the requirement for the employer to give written notice if the employee ceases to work there or if he never worked there. That may seem small, and it probably is small for General Motors or IBM or someone who has a clerk who can easily do it, but for a small firm that has enough to cope with, the actual requirement to do written notice is really an awful pain. If they could just pick up the phone and call either a hotline number or a particular number at the director's office and say: "This is a mistake. So-and-so never worked here," or "So-and-so just quit," or "He's just leaving in two weeks," or whatever, and have the director's office have clerks write it down if it needs to be in written form, if it cannot go right into the computer, it would be an immense help for the small firms.

Also, prescribed forms will get lost, they will get misfiled, and if they are in breach of the law because they are sending in their information in writing and not on a prescribed form, again, it is not making it easy for them to cope. If they could call it in, it would make it a lot simpler. Again, print the number really big up front where it is easy to find and you make the compliance with the law that much simpler.

It is interesting, Mr Wessenger, that you just brought out a clarification about exactly how much is supposed to be paid. This could be a real difficulty for small firms, too. If there is some way the order can spell out as clearly as possible exactly what the obligation is, exactly how much the small firm needs to pay, with a minimum of actual calculation that needs to be made, that would be really helpful; not in legal language, in really plain language. "Pay this amount" and then calculate it: "First, deduct the following deductions," and then list them. "Then calculate the 50 per cent. Then go ahead and deduct the other." Just make it as clean and clear and simple as possible. Otherwise you are going to be getting into problems because they are not going to know what to do.

Finally, on the issue of the director having the power to bring disputes to court if there are disputes about the amount of support being deducted, again, we would want to see that any disputes that really have to do with the payer's problems be settled with the payer first and that the small business owner does not get hauled into court unnecessarily. If he or she has wilfully flouted the law, obviously the law needs to be enforced, but if it is some kind of miscommunication or misunderstanding or problem, try to solve it at that level without necessarily pulling them into court, because there are lost opportunity costs. Nobody is running the business if the small business owner is hanging around in court waiting to be heard. These days especially, with the economy in the state it is, the more energy small business owners can give to the actual running of the business, keeping their employees employed, making payroll, the better.

Those are the major points I wanted to touch on. I will not go through all the brief. I hope you get a chance to read it. I put as many comments as I could from our members

in there just so you get a real flavour of what the small business community is feeling.

1420

We did a survey in the summer asking them about this particular issue and the way that they wanted to remit money, and a lot of what they had to say about going through government channels is highly interesting. I really hope that you read it and take it to heart. There is a great deal of mistrust of the government's efficiency and cost-effectiveness out there, and again it really highlights the need to streamline this act and make it as simple as possible. I am happy to entertain your questions.

**Mr Carr:** I was just wondering if there were various groups who were consulted. Were you consulted prior to this?

**Ms Ganong:** Yes, we were.

**Mr Carr:** So you had a chance to have some input on it?

**Ms Ganong:** Yes, we did.

**Mr Carr:** One other question. On page 12, on the liabilities, there is some concern on the part of business an income source is personally liable for paying. Have any of your business groups been concerned about that aspect of it at all?

**Ms Ganong:** I am sorry.

**Mr Carr:** On page 12, about an income source being personally liable under the liability there, for "paying to the director's office any amount." Have there been any concerns voiced by any of your members on that portion of it?

**Ms Ganong:** None was mentioned by our members. Again, I think it would really depend on the fact that that would only be enforced in the case of a really wilful, disobedient flouting of the act. You would not want to see that coming to force if the small business was inadvertently caught up in an administrative problem because the system was not properly streamlined. If somebody just goofed, made a mistake, was not clear, did not understand, you would not want to see that person be personally liable; only if it was a really wilful, "I'm not paying, come and get me," sort of attitude, which I suspect you are not going to see very much of in the small business community.

**Mr Carr:** I assume that is the intent. You mentioned earlier that you were looking at some of the cost being borne by the people responsible but you did not seem too clear on a number. I was wondering if you have done any research into how much it actually would cost a small, five-person business to do this. I think if you are asking somebody to look at that, you should be a little more specific, and I was just wondering if you could clarify it. You mentioned the \$50, whether that came off the top or whether there is any scientific method of determining—

**Ms Ganong:** We do not have any hard evidence right now. The way our organization operates, we do not have a committee structure the way other associations do. That gives them a sort of a tap-in very quickly to get information from their members that we do not have. Our members are



out there running their businesses; they are not sitting on committees.

We do survey them, but we did not have enough lead time to survey them on these particular points. But I could call around very informally to some of them and just see if I could get a ballpark figure from them about how much they estimate it would cost and bring that back to the committee. We do not have survey results based on 7,000 members.

**Mr Carr:** But you do not see it as an overwhelming burden even for a small business in terms of cost, other than the fact that you said, particularly with small businesses, that time is money. They would not be out of pocket other than in time, and I think your suggestion there was to keep it as simple as possible.

**Ms Ganong:** They would be out of pocket but they would not expect to be totally compensated for that, just as they are not totally compensated for what it costs them to collect the retail sales tax. It does not. It goes partway—it is a gesture, it is a help—but it does not totally compensate them and they understand that. They are taxpayers and they understand the realities, especially the situation we have right now with the deficit that we are facing. So surely they are going to bear a part of it. They are not happy about that, but they are used to it to some degree. Even the kind of compensation I am talking about is not going to compensate them totally for what they are out of pocket. They are going to be bearing some of it.

**Mr Carr:** I see. One of the large business groups that was here this morning was saying the turnaround time that was listed in there is very difficult, even for a big company like Dofasco. Do you see that as being a bit of a problem for a small business, knowing that a small business person has to answer every piece of mail that comes through right from the receivables to the government literature? Do you see that as being a problem in terms of the turnaround times that are outlined here?

**Ms Ganong:** Absolutely. The 14 days, I think, is too short; 30 days would be much more reasonable. It would make it easier for small businesses to cope. Again, they do not have sophisticated payroll systems, and as you say, it is difficult enough for large businesses. It is more difficult for small ones.

I think the payroll association people are probably going to be speaking to that as well, because that is their business.

**Mr Mills:** I have some difficulty in understanding the need to charge a fee for collecting this money. The reason is that I can understand sales tax. I used to work for the government in that department and I know all the problems. I have a hands-on feeling of all what goes on with sales tax.

I also understand that small business is very angry about all forms of government, which is why I retired last year. Collecting sales tax and getting paid for that is not a problem; but to get paid for collecting money to support a spouse or whatever, to me seems a little bit thick. Small business needs some sort of recompense for that. I might

use as an example, you collect UIC, Canada pension, income tax and you do not get paid for that.

**Ms Ganong:** That is not right either.

**Mr Mills:** No, but I wonder why you expect to get paid for this? You probably know the statistics show that small business is two or three people. I wonder what chances the small business would have of even having perhaps one here and there scattered around.

**Ms Ganong:** If the small business person was not put to any extra expense obviously—I mean we are not saying every small business should get this no matter what. Small businesses should only get it in proportion to the fact that they are incurring costs in the administration of it. So it is not that every small business in the province is going to get an extra \$50 a year just in case one of its employees happens to be paying support obligations.

One of the principles and philosophies that small business people live by is the notion of responsibility, and they have a very keen sense of it. They do not particularly want grants or subsidies for themselves. In fact one of the areas that they advocate government expenditure cuts in the most is subsidies and grants to business. That is always number one on the hit list.

If you are going to cut anywhere, cut grants to business. We do not really want that. We want a level playing field. We want to be able to do what we do but we do not want handouts or things like that. They have a very strong sense of responsibility, so one of the reasons that they support this initiative is because they feel that people who are responsible for child support should be indeed responsible for child support, and part of the responsibility is being shifted to the small business employer. The responsibility of actually getting the money to the recipient is now being shifted to the small business employer.

They understand the need for it. They understand the sense of it. They understand how it would make enforcement and make that obligation covered and help the spouses and children. But they still see that as a shift of responsibility, so they want to let the person whose responsibility it truly is know that they are taking on that responsibility on behalf of that person and that that person should bear part of the cost that the small business owner is now incurring to get that money where it belongs. So there is a responsibility, sort of a philosophical issue underpinning it as well.

**Mr Mills:** Maybe I think a little different. I think that perhaps if I have an employee working for me under those circumstances, that would become a cost of employing that person. I do not see it as a different identity about paying. Anyway, thank you very much.

**Ms Ganong:** You are welcome.

**Ms S. Murdock:** A really quick question. In terms of the employees of small business, people that are within your group, would it be fair to say the majority of them are women?

**Ms Ganong:** I really could not tell you. I do not know if we have any statistics on that. I know that the number of our members who are women, the number of women

business owners is increasing every year. But I do not have any statistics at all on the gender breakdown of employees.

**Ms S. Murdock:** Correct me if I am wrong, because I do not know the composition of your membership totally, but I know small business retail is in there.

**Ms Ganong:** About 25% of our members are in the retail industry. We have members across all sectors in the province. We have actually a bigger proportion of manufacturing members than the Ontario breakdown. We have manufacturing, construction, retail, services, financial. Every sector is represented in our membership.

1430

**Mr Sorbara:** Let me just begin by telling the witness that I think her brief is very informative and one would hope that, with the presence of the parliamentary assistant here, he will take note of some of the specific concerns that the Canadian Federation of Independent Business has on specific sections and can respond to them. I do not think that would cut to the heart of the bill.

I think the overall point that you make about small business feeling the ever-increasing burden of having to do things for the government, whether it is filling in worker compensation forms or—we have had a long discussion on that.

**Ms Ganong:** That is right.

**Mr Sorbara:** Your president vowed that he would destroy me after I presented my workers' compensation bill and he was partly right. Congratulate him for me, would you? But filling in those sorts of forms and other forms and reporting on a wide variety of things is, I think, something that all governments should be aware of.

The legislation that we are looking at now has its roots in American legislation primarily, which was seen as legislation to reduce the costs of social assistance by making welfare recipients cough up money that they should be coughing up and reduce the financial cost to government and transfer some of that cost to employers. I am surprised, frankly, that the CFIB is so enthusiastic about it, but that is a decision that you made.

I would like one little point of clarification, I guess, with the help of the parliamentary assistant and the policy advisers who are here, and it relates to the question that Mr Carr asked. Do I understand correctly, I ask the parliamentary assistant, that the primary liability of employers arises only where there is a case of wilful withholding of payment? In other words, if a notice has been received but inadvertently ignored and funds go into the hands of the supporting spouse and the employer has not forwarded the money to SCOE, is he or is he not primarily liable at that point?

**Mr Wessenger:** The legislation reads that it is a failure to remit "without proper reason," so that is the actual language in the legislation.

**Mr Sorbara:** I think this must be very important to the Canadian Federation of Independent Business. It is, "Oh, my God, I forgot," "Oh, my God, my wife was supposed to fill out that form," or "My husband was supposed to fill out that form and he did not."

This is very important, because primary liability for such payments can mean for a small business thousands and thousands of dollars, if it were an employee who was having, say, \$1,000 a month deducted from a paycheque and he or she was the only employee and suddenly the business realized that it had a \$10,000 obligation. I appreciate that the payer is also liable, but what about this primary liability of employers?

**Mr Wessenger:** It would be the same as we now presently have under the garnishment test. There would be no change in the—

**Mr Sorbara:** I can see that you are being advised to that effect, but let's get down to that. What is that? A garnishment test involves an employer very directly. He knows what is happening. But here we are expanding the number of people who are going to be paying support. Everyone is going to be included. Whether or not they want to be included, they are going to be, so that is going to increase the volume. We should be very clear, I think, about liability here, should we not, I ask my colleagues over on the other side of the floor.

**Mr Wessenger:** I really fail to see the difference between a garnishment being served and the question of a support deduction order being served as far as a small business is concerned. It seems to me that the test should be the same and obviously it would be—as I said, I have not read the jurisprudence on the matter.

**Ms Ganong:** Again, it is the issue that I alluded to earlier, that if the order is served and it does not mention the small business particularly in the order—and I can understand the reason for doing that, so you are not constantly reissuing orders every time an employee changes jobs—a small business person could easily think that it had no application to him or her and just chuck it. In which case, you would not want that person to be personally liable. That is—

**Mr Wessenger:** No, of course. I think I have taken in your comments very much about the need to have a proper notice and something that would bring it to the attention of the small business. Certainly when the notices are sent out—and the mechanism, the form of the notices will be, I assume, under the regulations—the staff will be directed to ensure that there is no opportunity for people to just toss something out.

**Ms Ganong:** Because it is different from garnishment, which is particularly addressed to that person and cannot be avoided. You just might want to take a look at the drafting and change the wording from whatever you have got now to make it a little more clear that it is cases of really wilful disregard.

**Mr Wessenger:** Except that right now, if people are completely negligent in dealing with something, I believe the law is clear that they are still liable for the obligation.

**Ms Ganong:** There is negligence and negligence. There is inadvertence or ignorance, which is one thing, and then there is just, "I can't be bothered and I'll get to it whenever," that sort of thing, which is completely different.



**Mr Sorbara:** I think probably for the small business, this is a crucial point. An undertaking from the parliamentary assistant that there would be consultation with the CFIB in the drafting of the regulations under this section, that there would be regulations made under this section probably would solve the point. I know that the parliamentary assistant said we should have the same test as when there is garnishment, but garnishment has historically been an unusual event particularly in the life of a small business, not something that arrives on a regular basis.

We are now moving into a system, we are actually advocating here this law system which would become much more regular, and I think before we summarily say, "Oh, well, let's just use the same test as before," we had better be careful, because it could involve thousands and thousands of dollars. The employee could end up with the money and the employer could end up in very serious financial straits because he made a mistake.

**Mr Wessenger:** I think the point is well made. There has to be, as well as a good notice provision to the small business, this public awareness program for small business. I think it is an obligation of the ministry to ensure that the public awareness program is such that it brings to the attention of the employers their obligations. That certainly has to be done by the ministry.

**Mr Sorbara:** Is that an undertaking then from the parliamentary assistant, Mr Chairman, that there will be consultation before the regulations are actually put into effect? I did not hear—

**The Chair:** The minister said that, I believe, on Monday.

**Mr Sorbara:** I did not hear that on Monday nor did I hear it today, but I am recommending it once again. I do not have any more questions.

**Ms Ganong:** I have just one more point to make. I did not mention this in my brief, but there is a great deal of attention placed on the notices that the employers have to send in. I did not see anywhere, and I may have missed it in the legislation, any indication that once the support obligation was terminated or somehow interrupted, the income source, the employer would be notified to stop making the deductions. I did not see that anywhere. It may be there and I may have missed it. But if it is not there, it should be there.

**Mr Wessenger:** That is a very good suggestion.

**The Chair:** Thank you, Ms Ganong, for a very interesting presentation.

#### IN SEARCH OF JUSTICE

**The Chair:** We now have a presentation from In Search of Justice. Come to the table and announce your names. I know you gentlemen have been here this morning, so you are probably familiar with how the process works. I need not go over that with you. Start whenever you feel comfortable.

**Mr Virgin:** Thank you very much, Mr Chairman. There will only be one speaker for our submission, although you are quite right, there are a number of very interested people with us today.

My name is Ross Virgin. I am the president of In Search of Justice. The real thrust of what we want to present to you in whatever can be accomplished in half an hour—we all have those time constraints—is we would like to just address one aspect of Bill 17, which is probably the most important concern that we have. Our group is made up primarily of fathers and, while Bill 17 or any other legislation addresses gender, I think it has been referred to a great deal this morning that we recognize that it is primarily fathers who are the access parents, the payers, and it is the mothers who are the custody parents, the recipients of support payments.

1440

I also fully understand that what I am asking of you today is beyond your mandate as part of the justice committee. You do not have the right to amend any legislation which would change the intent of that bill; I appreciate that. Having recognized what your mandate and your power is, I want to suggest to you that you do have the ability, though, to go back to your respective caucuses and bring to each of the parties—the NDP, the Liberal and the Conservatives—our major request of you today even though it cannot be included in Bill 17.

Our primary concern with Bill 17 is that you are, through the passage of this bill, enforcing only 50% of the law. That was referred to this morning when it was recognized by several presenters that family court orders include and define the support payments, the obligation of a non-custodial parent to accept responsibility for their children. We do not dismiss that or deny that. But the same court order also defines the access and visitation provisions for that non-custodial parent. It is with great distress that our members note that the new NDP government has destroyed Bill 124, which addressed the matter of access rights for non-custodial parents.

Access rights are not just for non-custodial parents; they are also the right of children to see both of their parents. I did not, although I have been considering it, go around to find out some of your biographies, just to find out how many of you have children and how many of you do not. Every one of our members has children and they care very much about those children. I want to suggest to you that the children of our members care very much about both their parents; not the mother or not the father but both their parents.

So we are here today to talk to you not only about the right of those fathers to see their children but also the rights of the children of this province. I really hope I can prod your conscience, because I do believe the politicians who run this province have an obligation to the children of this province, and it goes far beyond the dollars and cents to put clothes on their backs. It touches on the emotional importance of those children during their upbringing having regular contact with both father and mother. Regardless of the differences that may have arisen between father and mother, the children do not divorce their parents.

The access violations we encounter in our organization disturb us immensely. It is the reason we brought along some of our members today. I would like to tell you, without going through the details of their cases, some of the

horrendous experiences they experience. Those of you who were at the public hearings on Bill 124 heard some pretty outrageous and disturbing case scenarios, and I could probably keep you here for three weeks giving you those case scenarios. I do not think that is really what you need. I think you have heard enough in past hearings to know some of the difficulties.

I am not here to go on at length, giving you case after case after case, but I am here to implore you, to beg you to go back to your individual caucuses and bring back Bill 124 in whatever way you can. I am not suggesting at all that Bill 124 was perfect. It was not. It went through many revisions and it probably could have gone through several more. I appreciate Mrs Cunningham's comment that she was concerned about Bill 124; so am I. But now that it has been destroyed, we have absolutely nothing, and that disturbs me even more than an inadequate bill.

I also want to beg of you and plead of you to reconsider Dr Jim Henderson's Bill 95 on joint custody. It is not a dead issue by any means, and that is what we are referring to when we say Bill 17 today is enforcing only 50% of the law. It is enforcing the dollars and cents but it is not enforcing the most vital part of a family court order, the relationship between children and both their parents.

Can you imagine what would happen if the Ontario Provincial Police went on our highways and enforced the speed limits only against black drivers but not against white drivers? You people would have race riots on your doorsteps, and so you should. Can you imagine what would happen if the members of this Ontario Legislature implemented a job creation program only for men and excluded women? You would have every feminist group in Ontario on your backs, and so you should.

But it seems okay that we can sit here today and consider Bill 17, which only enforces 50% of the court order. With due respect, I suggest to you that is the least important part of the court order, and we are ignoring totally the right of those children to interaction with both parents.

I refer to Eugene Radomil behind me. He has a seven-and-a-half-year-old daughter. He has not seen that daughter since she was approximately two years old; very disturbing, obviously, for Eugene and also disturbing for his daughter Lenka. Numerous occasions have presented themselves when Eugene went to the door—you have heard the standard stories—and had the door slammed in his face and the daughter is "not home" during his access periods. Did Bill 124 solve that problem? Not totally, but at least it made us aware that this is a serious reality and serious problem. Just this past Christmas, Eugene went to his daughter's door to deliver her Christmas present and the house was empty. It had been sold and the daughter and mother have moved who knows where. Eugene does not know where his seven-and-a-half-year-old daughter is, and Bill 17 does absolutely nothing to address that. I have to suggest to you that that is more serious than the dollars and cents.

Butch Windsor, next to him, has a three-year-old son, Dustin. Dustin has now been taken to Sarnia, so Butch has to drive from Toronto to Sarnia just to exercise his access. After he has driven all the way to Sarnia, in a period of

100 days he experienced 40 access violations. Bill 17 does not address that problem. Again, I realize that you cannot amend Bill 17 to provide for that, but you can go back, each one of you, to your individual caucuses and say, "We still have to do something about this." Bill 124 has been destroyed, unfortunately, by the NDP, and I hope I can get some response back from the NDP members about why they might have done that. I hope it was not politically motivated, but Butch Windsor and Dustin do not know why. All they know is that there is a three-year-old who would like to see his father. As a matter of fact, when that three-year-old is with dad, even when dad goes to the washroom, the three-year-old goes in and says, "Daddy, don't leave me," because it has been so long since that son has seen his dad. I hope that is important to you, ladies and gentlemen, because it is important to me and it is important to every one of our members.

Paul Kelly is right beside me. At the time of their separation, his daughter Erin was six years old. He came into the category you have heard about before at the Bill 124 hearings, where he came home and the house was empty. His daughter was gone. For six weeks or some extended period, he never even got a phone call. He had no idea where his daughter was. And that is despicable. It is disgraceful. We have not discussed that here today. I hope you will consider that, because it is the right of a six-year-old daughter to know who her father is.

If any of you have been through divorce yourself and you came home to a house where you thought your daughter was going to be and she was not there and you did not know where to even phone her, I do not think I have to tell you what it feels like. I wish we could discuss that today as part of Bill 17, but we cannot. But you people can make it a priority in each of your three parties.

I would like to ask Marianne Karklins to come forward. She is also a non-custodial parent. It is not just fathers against mothers at all. She is a non-custodial mother, one son in the custody of the father. Fortunately for Mrs Karklins she does not have serious access problems, but she is here today because when I discussed this bill with her she said she understands how unjust it is to take support payments right off the top of her paycheque and yet have this Legislature do absolutely nothing about protecting her rights with her son should her ex-husband interfere with those rights.

1450

I want to thank these people for coming here today. A lot of our members cannot be here today. I am going to ask Ray Davidson beside me to turn around our silhouette of a young girl and a young boy, because what we have put on here are the names of the children of our members whose fathers could not be here today but would love to be here because they are having problems seeing these children.

What we are asking is that you care about these children as much as we do. We are not suggesting for one second that you disregard the dollars and cents; we understand that Bill 17 deals with that. But surely if you have children yourselves you can care about these kids too and go back to your caucuses and change their attitude so that we can do something about Bill 124 on the issue of access.



I would really hope you people can bring about Dr Henderson's bill on joint custody. These children have a right to two parents, not just one.

I want to make reference to some of the submissions this morning. It disturbs me immensely, the suggestion that the enormous majority of non-custodial parents are totally capable of paying support but just do not care, do not want to, are irresponsible. I have a lot of problems with the term "deadbeat fathers." I do not deny that there are some, but there is an awful lot of fathers out there who would love to see their kids and need your help to do that, so I hope you will give some serious consideration to those bills I referred to.

Dofasco this morning made reference to the fact that it believes 70% of the defaulters in its employ do not have the ability to pay. My own experience would vary anywhere from 60% to possibly 85%; it fluctuates quite a bit depending on the location and type of employment and also the economic situation during a recession. The group called the SARC Network also made reference to the fact that there are non-custodial parents who are unable to make their support payments. I just wanted to make that passing comment, that it has not been my experience that the overwhelming bulk of defaulting parents are irresponsible deadbeats. There are a lot who are in circumstances you heard about this morning which make it extremely difficult for them to pay.

I do understand that payment and the access issue are viewed as being separate, but I think it is a gross injustice to sit here today and leave these committee hearings and only deal with the almighty dollar and forget about the importance of children having a chance to see both their parents.

I would like to ask the clerk to distribute two of our handouts. In those handouts we have just reiterated so that you have it in writing. I trust you will take those handouts back to your caucus. It simply defines the fact that while we came here recognizing that it is beyond your mandate today or tomorrow or the next day to grant our request, it is not beyond your ability at all, for Mr Carr and Mrs Cunningham to go back to the PC caucus and tell it how important our children are in this province. It is not beyond the ability of Mr Kwinter and Mr Elston and Mr Sorbara—I really appreciate some of the talks I have had with Mr Sorbara, because he has six children of his own and I know he understands what I am talking about—to go back to the Liberal caucus. I know you tried your best with Bill 124, but keep on trying, please, and try to promote Dr Henderson's bill on joint custody.

Ms Murdock, Mr Mills, Ms Mathysen, Mr Fletcher, Mr White and Mr Wessinger, you have the opportunity to go back to the NDP and talk about the importance of children having a continuing, ongoing relationship with both of their parents after separation or divorce.

I want to thank you very much for your time. I know you have listened intently and that you do care about the children of this province, and I am looking very much forward to seeing your concrete steps to solve this very serious problem. Thank you very much.

**The Chair:** Thank you very much. We have a very limited amount of time. Are there questions from the New Democratic caucus?

**Mr Mills:** Just a comment.

**The Chair:** We should keep it fairly brief. Mrs Cunningham and Mr Sorbara have questions as well.

**Mr Mills:** In the beginning you asked, "You folks, have you got children?" Just for the record, I have children and I also have grandchildren. I have listened intently to what you have said and I am very pleased that you put forward that point of view, and I thank you for it.

**Mr Sorbara:** I want to say to the presenter that I understand where he is coming from on both points. He is right, of course, that we are taking up a separate matter here. I think there are two requests here: implementation of Dr Jim Henderson's Bill 95—that bill has not passed the Legislature, and just so the committee does not get the wrong impression, we have had discussions. I am not at this point a supporter of the themes or the particulars in my colleague Dr Henderson's Bill 95, but I certainly am strongly in support of the principles and the particulars of Bill 124.

Bill 124 was a bill that was agonizingly worked on over a period of a year and a half or two years. During some of that time, I was the minister responsible for women's issues. I can tell my fellow committee members, in particular the NDP members, that there was as much input from the advocates on behalf of women on that bill as on any bill I saw go through the Legislature in five and a half years. In fact, I can recall in detail battles between myself on behalf of those groups and the Attorney General at that time, the member for St George-St David, on the particulars of that bill.

But the grand thing about it was that we did reach a consensus which I could stand up and say was at that point accepted and agreed upon by very articulate advocates for women: women who were custodial parents and women who were custodial parents who had husbands who ought not to see the children, husbands who were violent to both children and spouse. The bill really was an example of where a Legislature, a government along with opposition and interest groups, did a pretty good job of working out a compromise. I want to tell the committee that I was absolutely shocked shortly after the new government came into power, on a day when one lobby group was making a presentation for more money for its organizations, that the Attorney General would take the political advantage at that time to stand up and say the government did not intend to proclaim Bill 124.

I want to tell the presenter that there is no need to reinstate Bill 124. It stands as a law of this land. All that needs to happen is that the provincial cabinet needs to proclaim the bill, just to say: "Yes, this bill is now in force. We proclaim it." It may well be that the government wants to make amendments to it before it does that. I think the government should consider that. This committee will look at those amendments. But the law is the law of the province of Ontario, passed by an elected Legislature. I just want to put on the record that I think the government was

trying to score a few early political points when it decided not to proclaim that bill.

I would like Mr Virgin to confirm whether the government consulted his organization before it announced it was not going to proclaim that bill.

**Mr Virgin:** No, they did not.

**Mr Sorbara:** Certainly our government discussed with you and a wide variety of groups and held hearings on the terms of that bill. I think it is absolutely shameful that a new government, without consultation, would do such an about-face. Those are my comments.

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**Mrs Cunningham:** It is good to see you again. At that time we listened with interest. You know, of course, that have I spent 10 years of my life in the whole business of supervised access in programs in London which I wish could be duplicated across the province. People simply were not denied access when they had that opportunity and the courts could refer them to that opportunity. It was a very positive thing, and something I personally have taken up with this particular government. Certainly some of my colleagues were in from London on Friday speaking to the Attorney General about it.

I did not mean to say that Bill 124 in principle was not necessary. It was. We had many amendments which we placed before the committee and ultimately one of our members, Mr Cousens, presented his own bill. So you know, of course, what we are talking about when we are saying that we have a real problem in our society today.

One of my great concerns about this legislation is something that you did not speak to and I will ask you to just comment. I do not really want to take up a lot of time, but I am quite surprised. Certainly in the literature that has been sent to us and certainly by individual members of society, they have told us about their great concern about people who in fact do comply. They do not want to see their wages garnisheed and they do not want to give up their right of privacy, and all of us are struggling with that as perhaps a possible amendment down the road. I just wondered if you had any comment on that today.

**Mr Virgin:** Yes, we do. Unfortunately, we could not in six weeks cover all the comments and issues we wanted to address, as you know, so the right of children to see their parents is our top priority. But in terms of absolutely the whole idea of making Bill 17 a blanket proposal, we are opposed. There should be the option. If the two parties can come to an agreement that Bill 17 not apply to those support payment orders, then those two parties should have that right. Does that answer your question?

**Mrs Cunningham:** Yes, it does, and something that we will consider. Mr Chairman, I would hope that you would pass on the word to whoever is doing the consultation that all groups, and especially groups that have been very much a part of the work of our Legislative Assembly, no matter what party, should be consulted. I think that you too would be concerned that this particular group that has had, I think, rather positive input in the past should have been consulted around this legislation, because in fact it

does affect them as a group. I think we tried to do that in most instances.

**The Chair:** I am sorry, are you speaking in regard to Bill 124 or Bill 17?

**Mrs Cunningham:** I am talking about this bill.

**The Chair:** This bill, thank you.

**Mrs Cunningham:** Mr Sorbara asked a question and—

**The Chair:** He was referring to Bill 124 and its not being proclaimed, not Bill 17.

**Mrs Cunningham:** I am sorry. I thought that he was asking if there was any input around this bill. Have you had input into this particular piece of legislation?

**Mr Virgin:** No, we have not been contacted by the government on Bill 17 or Mr Sorbara referring to the refusal of the NDP to proclaim Bill 124. We have had no contact on either one.

**Mrs Cunningham:** Okay. Well, I am not talking 124; I am talking this piece of legislation.

**Mr Virgin:** Neither on Bill 17.

**The Chair:** Mr Sorbara was talking about 124.

**Mrs Cunningham:** Okay. Thank you for clarifying, Mr Chairman.

**The Chair:** Mrs Cunningham, you bring up a point which I think is very significant and that this group does, as well. And I think Mr Virgin was very clear that we were not talking about access within this bill, but certainly that is a major issue. You brought that up yesterday as being at the moment an issue in limbo, which I hope at some point our committee will address in some form or another.

**Mrs Cunningham:** In fairness, I think the minister was here as we all raised our points and he knows it is very high on the agenda of those of us who had an opportunity to speak.

**Mr Sorbara:** In light of what Mrs Cunningham was saying, I just want to make it perfectly clear that what I was talking about in terms of consultation was in the government's deep-sinking of Bill 124.

In Search of Justice was one of the organizations among many that was consulted during the development of that bill. They were heard by a committee like this during its consideration by the Legislature. The bill was passed by the Legislature. Then there was an election and then the new government came into power and, without consulting this group or any other group that I have heard of, made a decision on the day that the Ontario Association of Interval and Transition Houses was making a non-partisan presentation to this Legislature, this government announced that it would not proceed with Bill 124.

I think that was a crassly political move to make, particularly without consulting the very group that had advocated so strongly for it. I just wanted to have it confirmed today before this committee that neither In Search of Justice nor any other organization that it knows of was consulted before that decision was made and to tell the government that it can simply reverse itself on that and



consult and see what it is going to do about reinstating 124, either in its original or amended form.

**Mr Virgin:** Mr Chairman, is it possible to get Mr Wessinger to make any comments, shed any light at all on whether the government is going to proceed on the access issue, or is he not free to—

**The Chair:** I am not sure that there has been any decision on that. Mr Wessinger, would you like to comment?

**Mr Sorbara:** That is what you were elected to do.

**Mrs Cunningham:** He is looking for direction from our committee.

**Mr Wessinger:** I think the Attorney General yesterday made some comments with respect to looking into the whole question of access and certainly I know it is on—

**Mr Sorbara:** With respect, that was the most equivocal statement—

**Mr Wessinger:** No, I think it is quite clear that he made that statement that the ministry is looking into the whole question of access and wants to come up with a solution.

**The Chair:** Obviously at this point there is a limbo in that regard. Thank you very much, Mr Virgin.

**Mr Virgin:** Thank you, sir, and members.

#### CANADIAN PAYROLL ASSOCIATION

**The Chair:** We have now a delegation from the Canadian Payroll Association. Certainly, as Mr Sorbara indicates, your group is always welcome. You have half an hour for the presentation. At the end of your submission, the various caucuses probably would have questions for you. You are free to divide up that time in whichever way you wish. Whether you choose to use the majority of that time for your presentation or a minority is entirely your own. Usually it is 50%. Please identify yourselves for the purposes of Hansard.

**Mr Scarfone:** Ken Scarfone. I am director of provincial government relations for the Canadian Payroll Association. I am also supervisor, rail payroll, for Algoma Central Railway in Sault Ste Marie.

**Ms Coogan:** My name is Pauline Coogan. I am the director of communications for the Canadian Payroll Association. I own and operate my own payroll consulting firm.

**Ms Lander:** And I am Karen Lander. I am the executive director of the Canadian Payroll Association.

**Mr Scarfone:** I trust you all have a copy of our brief that we have brought here this afternoon. We would like to review some of our input where we have found problems with the presentation of Bill 17, and I will read excerpts from our brief.

The Canadian Payroll Association is a national trade association founded in 1977 which serves as a voice of payroll throughout Canada. Our membership comprises more than 1,700 companies which employ over two million people across Canada. The CPA represents its members' interest from virtually all sectors of the business community, including governments and major public sector employers.

Half our membership is based in Ontario. Members include the chartered banks and the majority of other service bureaus involved in all facets of payroll preparation for more than 50,000 employers. Of the 25,000 companies serviced in Ontario, the average client has well under 100 employees on its payroll.

The CPA embraces the principle of Bill 17. We recognize that considerable hardship is caused to spouses and children when support payments are not made. As taxpayers, we acknowledge that relieving such hardships has required the government to assume administrative costs and increased social assistance expenditures. Clearly, Bill 17 is intended to end this hardship and ensure that this burden is carried by those who have the legal obligation to make support payments.

Our members are familiar with the administration of the existing support and custody order enforcement system operated by the Ministry of the Attorney General. From our discussions with the ministry officials about Bill 17, we understand that approximately three quarters of the support and custody orders are currently in default. Automatic deduction of support payments clearly offers to alleviate this unacceptable situation.

Major administrative implications: The CPA wishes to address two important implications of automatic deduction of support payments which will have adverse impact upon our members. These are the financial burden upon employees entailed by the introduction and the operation of the new system and the adverse consequences of requiring employers to divulge confidential information under the "duty to inform."

#### 1510

Under "Financial Burden," the government of Ontario has said that it stands to save millions of tax dollars through automatic deduction of support payments. Unfortunately, a considerable part of this saving will be effected by shifting the financial burden to employers. Employers will do so because they are legally obligated by Bill 17 to assume increased payroll administration costs. Those who have been evading their legal support obligations will finally be held responsible for them. However, employers, who are innocent parties in any such transaction, will incur a financial burden when the responsibility for collection of support payments is shifted from the government to the employers.

Another concern of the CPA is the confidentiality of personal information and duty to inform. Employers have an obligation to guard the confidentiality of personal information divulged to them by their employees. Members of the CPA give the highest priority to protection of this information. We are therefore concerned that the Bill 17 system not place complex requirements upon employers that could result in breaches of employee confidentiality. The CPA strongly opposes the bill's requirement that employers convey information on sources of employee income beyond that paid directly by the employer. We believe that a system is in place through the courts which secures this information directly from the individuals involved. Imposing this obligation upon the employers may jeopardize employee

confidentiality and do so in regard to matters which touch upon their most private affairs.

Under "Specific Comments," there are a number listed in our brief. We are only going to highlight some of them. As we mentioned before, one was the confidentiality, and we have a lot of concern on that. Another is the duty to inform. We feel as an association that this information could be made available from the employee or the debtor, as stated by the law, and as an employer we should not have to pass that information on to the director's office.

On the technical aspects of this Bill, the CPA has considerable expertise in payroll management and administration. We have already indicated to ministry staff that our association is very willing to continue to work with government to ease the implementation of Bill 17.

We believe the CPA can play an important role in helping you, as legislators, to make Bill 17 more workable and in facilitating its most effective implementation. We are encouraged that the government plans an extensive program of public education and intends to develop detailed information to aid employers. One of our problems was, when we heard about this Bill 17, we figured the CPA could have made a major impact on some of the legislation that was put in this bill in the first reading.

We had not been consulted for any of that input with our expertise of people in managing payroll. That information, I think, is vital in the implementation and the administration of this bill in an orderly manner. Some of the issues we have brought up here are a concern to the association and would be to our members for the administration and the costs involved under the current changes that are before the Legislature on this bill.

**Ms Lander:** would you have any comments?

**Ms Lander:** I think only to emphasize that the association has a good track record in working with other governments in order to help communicate with employers and to provide you with information that you may not be aware of in terms of how our systems work. We have developed good, effective working relationships and would like to do so with you on this particular bill.

The financial burden is going to be placed, to a large extent, on the shoulders of employers. We do not believe that employers are unwilling to bear that burden, but we would like to be able to work with you to ensure that the systems that are set in place do not impose any greater financial burden on employers than they already have.

**Mr Sorbara:** I want to begin by saying that I, for one, and I think all the members of the committee, are glad that you are here. I am a little bit distressed that you suggest in your brief that you have not been consulted by the ministry on the specifics of the bill as it was presented in first reading. I have some good news for you. We perhaps will not be considering this bill clause-by-clause until some time next month. We are going to deal with that question a little bit later, so there may still be time for you to get your two cents' worth in.

I want to tell the members of the committee and the members of the ministry who are here that I think it is probably extremely important that consultations be under-

taken with your organization. The reason I say that is that this bill and this act, when it becomes an act, will work if it is done in a way that it is administratively easy for the people who have to do the work.

Now, I guess we have come a long way from the days in which pay meant there is a little brown envelope for you with a bunch of dollar bills and some nickels and quarters and dimes in it that you pick up at the wicket as you leave, and I would like to ask the woman—I am sorry, I have forgotten your name.

**Ms Coogan:** Pauline Coogan.

**Mr Sorbara:** You said you were a payroll consultant. I take it there is a wide variety of systems of paying people, from the most rudimentary—that is: "Here is an envelope. You worked 10 hours and you get \$10 an hour, so there is \$100 in it. I did not make the deductions but we will not say anything about that"—to very sophisticated computer systems that can do just about anything that you want them to do. Could you tell us a little bit about that and how a system of automatic deduction is going to impact on that?

**Ms Coogan:** Unfortunately, even when you pay one employee, you are faced with all sorts of regulations. Of course, none of our members just does the brown envelope with no deductions. They are all very aware of what is required. Of course, we have had to get involved in all the ones that grab names, like the GST. That affects a payroll operation as to what taxable benefit would be computed; also the pension adjustment, which is very complicated legislation. That is something that payroll people have also had to get involved in.

We have been very active as an association getting the government, Revenue Canada, to come around to start bouncing ideas off us before it gets passed. They realize, in order for things to work for them, they have to have it work for the person who is making the deductions, and the same happens for this bill as well. We can tell you what the problems are. As far as garnishments are concerned, payroll companies will get a garnishment from more than one jurisdiction.

**Mr Sorbara:** You said a payroll company will get a garnishment?

**Ms Coogan:** Sorry, a payroll department will get a garnishment from more than one jurisdiction and perhaps from the federal government and perhaps from the provincial government and also maybe a district court, which is also provincial. But which one do they take first if it is for the same employee? Some garnishments require that you deduct 100% of the person's net. For example, the federal government and the provincial say 20%, and most of the support is up to 50%. Do you then take a portion of that or do you cut off at a certain amount?

There is never a lot of information for the payroll person, who very often is just a payroll clerk and does not know where to go to get the answers, because if they phone one court, the one court will say, "We want our payment," and the other court will say, "Well, we want our payment." So who do they go to then to rule across jurisdiction?



That is the same problem that comes up again and again when you are dealing with two sets of government.

You have the federal government and the provincial government and you are dealing with people who are having to make decisions on a wide variety of issues and then on very tight deadlines have their payrolls go out automatically every pay and be perfect in their pay.

That is what employees expect, because as soon as someone gets something wrong on his paycheque, he immediately blames the employer and that causes a lot of employee-employer bad relationships, so it is a very sensitive issue when it comes down to pay.

1520

**Mr Sorbara:** Now I want to give you a hypothetical situation of a company that has 2,000 employees and a sophisticated payroll system that you designed for them, including appropriate computer technologies. When the government passes this legislation, that company comes to you and says, "Would you please modify our system so that we can comply with the government's requirements here?" What do you do for them and how much do you charge them?

**Ms Coogan:** Unfortunately that is not the business I am in. I am more in consulting and helping people understand the legislation as opposed to the systems end. Our association of course does; our members consist of all the major chartered banks. Unfortunately we do not have a member of this committee at this point who would speak directly to that issue, but in dealing with other issues I have worked for a payroll system before, a company that provides service to many clients—

**Mr Sorbara:** Well, then, speculate.

**Ms Coogan:** —and it is quite a long development process, to change a system, especially a system that has maybe been around for 10 years or longer. You just do not go in and press a button and make the change. It is quite costly because you are having people, first of all, to understand the legislation correctly.

**Mr Sorbara:** There are training costs.

**Ms Coogan:** There are training costs, writing the specifications. There are development costs and then analysts' costs on top of that to make sure that what the programmers have come up with actually matches what the person wants, according to the legislation, and then there is testing. If you want to turn that around in a very short period of time, it is virtually impossible. You do a lot of hit and miss for a while and then maybe within a year's time it is working properly, hopefully, but it is very expensive and it takes a lot of time.

**Mr Sorbara:** You consult, you said, on the implication of legislation. What difference would it make if this bill were administratively good for implementation purposes or an administrative nightmare or administratively bad? In other words, what difference would it make if the government listened to you about some of the administrative problems in implementing this kind of system?

**Ms Coogan:** From a practitioner's point of view, administratively you are going to get the money that the bill

is seeking more consistently and certainly on time. If a payroll person gets a piece of paper he does not know what to do with, what are the chances of your getting the money in in the correct manner? From a system point of view, again, it is understanding what it is you need to do in the first place. You would need to have a good understanding before you can even build the system.

**Mr Sorbara:** So it would be your advice that the government speak to you before it puts the bill in final form and writes the regulations?

**Ms Coogan:** Because we know what it is for someone to get something like this and not know where to turn to when he has questions.

**Mr Sorbara:** I want to second that recommendation through the committee to the ministry. I have no other questions.

**Mrs Cunningham:** Thank you very much for being here today. I think you have given us a number of suggestions that will improve the technical aspects of the legislation and I am sure we will be taking them under advisement. There is a fair bit of work to be done in seeing how these apply to the legislation, and whether or not we come back with amendments or further regulations, I do not know. But we will be asking, I hope, the staff to take a look at this particular paper because you have raised four or five good suggestions that have not been brought to our attention before. You obviously have the expertise. You also urged the government to make certain that you are asked when it comes to the implementation of this, for further changes.

From a point of view of being in a position of working in payroll offices—you represent people who work in payroll offices—one of the great outcries, at least from individuals as they respond to each of us by way of correspondence or phone calls, has been the idea of garnishing people's wages anyway. People who now have their own relationships which are working with regard to the exchange of money, whether it is court ordered or otherwise, are not happy with this legislation, obviously. We are receiving a lot of input from those individuals.

What has your experience been or do you have any advice to give us with regard to that aspect of the legislation? Should there be a trial period? Is this a fair piece of legislation? You yourself talked about the confidentiality in the first two pages, so if you would just like to enlighten us, we would like to hear from you on that point.

**Ms Lander:** That certainly is an issue which came into the course of our discussion over this bill, and obviously people who look at this legislation are going to look at it both from a personal point of view as well as from the point of view of employers. We do attempt to confine ourselves in our comments to things that impact the employers, not to attack the basis of the legislation. So while we have discussed it, it is not a position we wanted to put forth.

On the other hand, it was raised that by virtue of the government implementing this kind of system, certainly employees are going to have strongly held feelings about their private lives being opened up even further and that,

as often happens with payroll departments, that is going to have an impact. In setting in the administrative systems that we have looked at, we want to ensure that there is very little interaction between the employer and the employee with respect to how these court orders are carried out.

**Mrs Cunningham:** In the very first letter that happens to be in this file that we received yesterday, the individual who is writing talks about chances of promotion and the fact that probably these kinds of attitudinal problems that exist in today's society may affect this person's chance of promotion. They also talk about being a small-business person and the cost to their payroll administration, a new bureaucracy with regard to increasing our small-business taxes. It would not matter which letter I picked up. Those would be the points that would be raised. Would you want to respond to any of those?

**Ms Lander:** I think part of the problem when people get a garnishment—we have been dealing with garnishments for years now—is not knowing what to do with them and not knowing where to turn, and when you try to find out the answer, not getting anywhere. It is the same with many government agencies. It has been the same with Revenue Canada all this time. We have come a long way since a few years ago even, but now we are bringing in more legislation where you are having to face the same thing, and people just are put off. If the instructions were laid out very clearly, the attitude facing garnishments and such things like support orders would not be as negative to begin with.

As far as the confidentiality goes, no one wants to get a garnishment. The payroll personnel will know that the person is having money problems and now the employer is having to get involved with the individual's financial problems and feels, "Why do I have to get involved?" The law is, you do.

When it comes to support payments, these are not just people who have defaulted. These are people who perhaps have been paying fine up until now. All of a sudden the payroll person knows that they are having a problem.

Payroll people deal with confidentiality all the time, so I think it is okay—if it is held in that department, there are not going to be problems of this getting out, hopefully, if the payroll person is good. But then someone else has to get involved, for instance, the payroll department reports to accounting and the controller maybe has to sign off on the journal entries, and what is this figure? So of course the controller now is going to know what is happening.

The personnel department is certainly going to know what is happening and all these people—it has mushroomed—know not just what this person makes which is a standard anyway, but also know that they are having difficulties. First of all, they might have a child somewhere and they are not making their support payments. That is when you get into the confidentiality issue. It is going to be traced back, unfortunately, to the payroll person if the information gets out and chances are it is not the payroll person who has let the information out.

**Mrs Cunningham:** In fact you are reassuring me that there are some real problems in the confidentiality aspect

of it, just by the nature of our workforce and the fact that we change and the fact that, as you said, if the payroll person is good—we all face those kinds of challenges in our everyday work. Of course a number of us have some concerns about the legislation. We will try to amend it as best we can, but that would be my greatest concern, the punishment of people that are already complying and working things out with their families.

1530

**Mr Scarfone:** I might mention on the confidentiality part of it, just highlighting a little bit more what Pauline was saying, that a number of payrolls will make the deductions for the support order. That goes to an accounting department to cut the cheque for that total of the support orders with probably a listing of who they are for. It is not hard for people to see things, and sometimes outside the payroll department that information is let out and that is a great concern of our membership.

**Mrs Cunningham:** One of my greatest concerns in representing the public is that we are often stuck with making legislation that aims at—in this instance we are saying 80% of the population, but we are not really, because of that 80%, a number of them do make efforts to pay. They just cannot pay the total amount of the court order. We are told by the witnesses before the committee the number one reason is that they do not have the money. We are now faced with some legislation around, first of all, a very small proportion of people who are not accepting their responsibilities, others who just cannot keep their responsibilities, and then that other group says, "if we can't see the child, then we won't pay" kind of thing.

That is what we are trying to deal with today and it has not been easy. But we do appreciate—I appreciate—your being here and helping us out with some of the technical parts. We can make some improvements, I am sure.

**The Chair:** With the indulgence of the committee, Mr Wessinger would like a couple of questions or statements, and then Mr Mills. Mr Wessinger's time will be part of the government caucus.

**Mr Wessinger:** I would like to thank you for coming here and providing us with such a comprehensive report. We will be addressing your concern on page 8 with respect to the window of seven days. We in fact are going to bring in an amendment which will provide a window of 14 days, which is I think more than you have requested.

With respect to the question of priorities, I think it is a very interesting aspect you have raised. It does involve different levels of government, but I think what it brings to our attention is that we should try to provide some direction to employers and payroll departments with respect to the question of priorities. I agree it is a very frustrating situation for employers when they are faced with competing claims and it is very difficult for them to try to sort out who has priority in such a short period. So I appreciate that being brought to our attention.

We will look at the balance of your concerns and we will try to accommodate them in the legislation. I know our ministry has met with you and had several conversations and it certainly wants to continue with that dialogue.



**Ms Coogan:** For that window, that would be for date of receipt of the notice? I know you have 14 days in the legislation in which to comply or the first payday. We are looking for a seven-day window in which the form is actually received.

**Mr Wessenger:** Yes.

**Ms Coogan:** So the amendment is 14 days to—

**Mr Wessenger:** It is after receipt of the notice, yes.

**Mr Mills:** I think, according to the clock, I have seven minutes left. I have a question and a comment. Do you see the time for that?

**The Chair:** That would be reasonably accurate. If you do not wish to use all of that time—

**Mr Mills:** No. I just do not want to rush things. Thank you for coming here and putting this point of view across.

Yesterday we had the Attorney General here and he spoke of making the collection of these support orders somewhat socially acceptable; for instance, someone takes so much money out of my pay every month for the United Way, so I suppose that is not confidential because they might look and say "Well, there's a cheap blighter" or they might say I am generous.

In the same process, do you see through your membership that everybody is sort of really uptight about this now? Have you talked to your membership? Do you perceive that down the road, after the initial shock, this will be socially acceptable and all the great concern about it now will die out and it would be just like taking off for the United Way, political party donations, income tax, and no one will think anything any more? Do you have any feedback from that?

**Ms Coogan:** I know there is still a lot of distress over the garnishments, and they have been around a long time. I would only assume the same for this, even more so.

**Mr Mills:** I can see a garnishment is a different process than this. Obviously your members have not addressed the difference, then, if they still think it is the same thing.

**Ms Coogan:** As far as the confidentiality of someone who has got a garnishment is concerned, it is because they are unable or unwilling to pay something they owe. That does not sound as bad to me as not paying your support payments, and I would imagine that is the way our members are looking at it. As far as protecting the confidentiality of their employees is concerned, why should we know about that?

**Mr Mills:** My comment is that I suppose is that when you folks come here and make this sort of presentation, you have no idea before you go away how we members of the committee feel about certain things that you said. I think the onus falls on me that if you say something I agree with, before you go I should tell you about it.

When I read the bill through the first thing that hit me about the notices of pre-paid ordinary mail was that there was no proof of service here, and I can see that is a concern of your association. I would just like you to know before you leave that it is a concern of mine and I hope, through this process we have here, to draw that to the

attention of my colleagues and perhaps get some support, because when you issue a summons to someone you have got to have proof of service and I would think you have to have that.

You cannot rely on the mail, because where I live there is a letter there sitting on the radiator that is a bill, obviously, and it has been sitting there for weeks and no one has done anything about it. I tremble to think some poor unfortunate soul is going to get nabbed for that eventually and he does not really know the bill is there. I view this with some concern. Thank you for coming.

**Mr Scarfone:** We would like to thank the committee for letting us make this presentation to you and we look forward to working with you on any matters of any nature in the implementation of this bill. We will only be too glad to help you.

**Mr Sorbara:** Can we get an undertaking from the parliamentary assistant that this will happen, that there will be consultation with the Canadian Payroll Association?

**The Chair:** I understood that was already occurring.

**Mr Wessenger:** Yes, it is already occurring and it will continue to occur.

**Mr Sorbara:** Good

#### CANADIAN SECOND PARTNERS FOR ACTION

**The Chair:** We have now a presentation from the Canadian Second Partners for Action, also known as Canspact. You have witnessed a couple of the presentations. Feel free to commence when you wish to. You have half an hour to divide as you wish, and perhaps you could introduce yourselves for the purposes of Hansard.

**Ms Kelch:** My name is Dorothy Kelch and I come from London.

**Mr McIntyre:** My name is Don McIntyre, I am also from the London area.

**Mr Verkley:** My name is Frank Verkley and I am also from London.

**Ms Kelch:** I am going to read off a sheet of paper, because I am a little bit nervous and I am not used to this. I am a middle-class, normal, poor person.

Canspact is a volunteer non-profit organization of concerned citizens who have come together to form a support and lobby group dedicated to representing the interests and rights of second partners.

We strongly object to certain inequalities and injustices in legislation such as Bill 17, as well as the total disregard by some of the legislators of the very existence of the second family. We will attempt to convince the legislators and the judicial system that second families, which constitute an increasingly large portion of the Canadian population, are deserving of recognition, consideration and equality under the law. We are those conscientious people who have not run from an obligation, but have remained and are attempting to pick up the pieces of a broken life, a broken marriage, and with support and love of another partner, another spouse, to get on with our life.

Because we have been in each and every position involved in separation and divorce, we feel well qualified to

present our formula for equality in family law. We have been first wives and first husbands, ex-wives and ex-husbands, second wives and second husbands, moms and dads, grandmas and grandpas, step-parents and step-grand-parents. We have the knowledge and the valuable experience to know what changes must be made to promote fairness to both the first and the second family, and by the same token what will destroy their attempts to survive.

Canspact endorses the fact that a child who is the innocent victim of a divorce has the right to share equally in the life of both parents. The law ought to encourage and enforce the rights of this child and severely reprimand the parent who is in contempt, whether it be in regard to non-payment of support or in the denial of access to the non-custodial parent.

1540

**Mr Verkley:** I would like to make my short presentation, which is on the last page of our submission. I will read it.

Bill 17: The intent of this legislation is to collect support orders. We already have such legislation. The consequences of Bill 17 are many. We have legislation that allows garnishment of wages if arrears are tabulated and seizure of assets to cover court-ordered support orders. Bill 17 has a basic flaw, with a backdrop that many fail to perceive.

The basic flaw is that all responsible people are regarded as irresponsible when it comes to support arrangements, taking the responsibility from a parent and forcing an agency with absolute power and no responsibility to any aspect except collection. As if division in the family units were not enough, now every employer and income source is involved.

With the only source of decision related to support allowed to emerge from the judicial courtrooms, we have set ourselves up to the mercy of overbooked schedules, of courts and lawyers, with any motion court action realistically costing a family law lawyer to charge fees of \$500 to \$800 per appearance.

With interim rulings based on scant examination of all aspects of both parties' life and finances, the reality is that they remain for much too long, mostly for ever, before things can be worked out. If one party is intent on being unco-operative, it might be years before things get in order, and then the time of honouring illogical support orders will effectively hinder a judge from changing interim support orders.

We have set up two options. One is to pay all support orders, illogical, fair or financially devastating, or pay the consequences of absolute enforcement with no effective compassion, and two is to give up, do not pay, do not work, go on government assistance.

Instead of laws that allow for individuals to be responsible, Bill 17 support deduction orders insult all Ontario residents. I voted NDP for a government that would act in a compassionate and fair manner. With our social fabric under stress, mandatory support deduction orders only serve to promote grief, causing responsible members of our society to weigh the option of just packing it in at a

time of the highest amount of stress the individual can experience.

A great deal of review of existing family law is required to alleviate problems regarding support and custody order laws. Other avenues beg investigation and attention.

**Mr McIntyre:** You all should have two parts to this presentation. The second part is primarily backup documentation to some of what I am going to refer to in the presentation. Because of the thickness and the detail that is in here, it is impossible for me to read through the whole thing in the time allotted, and you will not have any questions.

I would like to just read a little bit of the introduction and then hopefully, when you review all this, you will have time to read the rest. I will deal then exclusively with the conclusions and specific problems with Bill 17.

We would like to start off our presentation with a quote from the Honourable A. C. Hamilton, associate chief justice, family division of the Court of Queen's Bench in Manitoba. In his closing statement of his address to the Organization for the Protection of Children's Rights he said:

"If there have to be separations and divorces after real efforts to save the family, let us develop the most effective means of serving the needs of the affected children. Before we rush off to search out new mountains to climb, let us complete the work we have started. Let us devote more energy to preserving the family. Let us improve our concentration on the rights of children. Let us improve and expand our systems for resolving disputes with the main emphasis upon protecting the needs of children and let us work together to achieve these ends."

We have included a copy of his speech in its entirety with our written presentation. It is at the beginning of your second section. Although it does not deal extensively with support enforcement, it describes a very humane method of dealing with family law disputes that has had success in the province of Manitoba. We feel before you continue any further with this proposed legislation, the children of Ontario would benefit greatly if you would read Judge Hamilton's presentation and perhaps considered some alternatives to this problem.

Before I go on—and I am going to continue on page 8—I think it is very important that you understand—and the pages that I am skipping over probably go into this in detail—how court-ordered support orders are arrived at. Unfortunately, the whole thing happens very fast, in a matter of 10 to 15 minutes, usually on an initial interim order before a judge. Although there are financial statements from both parties presented at the time, they are seldom referred to.

The judges make the decision based on the fact that it is an interim order and, theoretically, as all the information hits the mill, a final decision will come that will be more logical. This does not happen, because at this initial interim order there is a winner and there is a loser. Generally the custodial parent is the winner. If it is a substantially good interim order, the sole job description of that person's lawyer then is to adjourn, delay, use whatever tactics necessary to establish the status quo, so that whatever the



support order is, ultimately it usually becomes the final court order two years down the road.

Also, it is very important that you understand that there are no standards for determining what the amount of support is going to be. Given the same two lawyers' presentations, the same two financial statements put before three different judges, you are going to get three different support orders. They will not be the same, guaranteed. There is a lot of meat in these pages I have skipped. I really hope you do concentrate on it.

On page 8, Specific Problems with Bill 17: Several comments, just in the overview of Bill 17, give cause for concern. The fact that this new support deduction order is going to be automatic is frightfully unjust. Before the support payer is even in arrears he is labelled a debtor. We were of the impression that in Canada you are innocent until proven guilty.

How do you think other people view you as a person when you have your wages garnisheed? How do you think you feel about yourself when your wages are garnisheed? How does your employer feel about your ability to manage money for him when you have been found incapable of managing your own affairs? Why would any government even consider this type of legislation? It is punitive and little will be accomplished if it is passed. Please remember that some of us support payers are making our required financial obligations consistently and completely without fault.

The next area of concern is the fact that now there are going to be two court orders. I hope I have demonstrated so far that it is virtually impossible to vary the existing support order, and now where it is unjust, the government is suggesting that I have to go to the legal expense of trying to vary two court orders. The courts do not have the time to deal with drunk driving offences, drug offences, common assault cases. Where do we find the time to hear family law cases? Where do we find the money to argue the family law cases?

In the proposed amendments to the Employment Standards Act, the suggested changes will have no effect at all on protecting the employee. It may well be somewhat effective in the large corporation with union support, but in the average business you can get laid off for wearing the colour green two days in a row, regardless of the real reason. Where is your protection when you are out of work and looking for employment with a garnishment for a companion? Employers do not need any excuse for dismissal during the probationary period of your new employment.

1550

In the actual bill, subsection 1(1), here lies the real problem, "enforceable in Ontario for custody of a child, but not access to a child." The custody order does specify access to a child and it should be enforceable. Access is not just a non-custodial parent's right, it is also the child's right. We need to enforce the right of a child to have his/her physical needs taken care of but we must, at the same time, enforce the right of the child to have his/her emotional needs taken care of.

Subsection 3(3) states that only the person entitled to receive support may file a support order. The director in this respect should be working for both parties. How many support payers have given cash directly to the person who is to receive it for support over the years? There are no receipts, or if there are, they may be lost. Paying the director guarantees documented proof of payment of support. Please remember that we are dealing with the general public, many of whom may not understand law, speak the language or have enough sense to get a receipt for any sum paid direct to their ex-spouse.

Subsection 3c(19) needs clarification. The way we interpret it, it would indicate that the support payer's income could be reduced by both the support deduction order and the garnishment for the same support obligation. How many times do we have to pay for the same pay period?

Clause 3d(3)(a) is a major concern. "Unconscionable" will need defining legally. In layman's terms it means if you want relief you have to put yourself on welfare and deplete all your assets before anyone will recognize your plight.

Section 3f makes no sense. If neither the support payer nor the support receiver wants to participate in this program for whatever reason, then they should be allowed to opt out rather than waste their money fruitlessly trying to vary the orders through the legal system.

Section 3i is typical of the injustice of the system. The recipient of the support does not have to pay any moneys for those legal actions, yet for every error, dispute, etc, that the debtor has to correct, legal fees are incurred.

Section 3j suggests that the debtor may be required to file financial statements as frequently as every six months. Let us have some fairness in this area. If the debtor has to provide financial statements to prove his/her ability to pay, then at the same time let the recipient provide financial statements to prove his/her need for continued support. Just maybe this could lead to a scenario where a variance would be more readily obtained where there had been a material change in circumstances.

Bill 17, in our opinion, is a step back to the old penal law. A test of a good law should be to ask if it ultimately encourages a new arrangement which logically would happen anyway. Bill 17 does not. Bill 17 will decrease incentive for a second wife to go out and work. Bill 17 will increase incentive to fight for custody of the children. One may not be able to afford to enter into a long, bitter custody fight.

Bill 17 will increase the friction between the two ex-spouses. Bill 17 will cause a non-custodial parent to enjoy his or her children less. Bill 17 will put many in a position where they cannot arrange financing through normal financial institutions. Bill 17 will cause a major slowdown of the judicial process because, where before an order could be made in the absence of legal counsel, judges are going to be much less likely to make even an interim order until they are satisfied that both parties are represented properly.

Bill 17 will drive up legal fees. For example, normal delays in drafting an order can be handled by fax of the endorsement to SCOE currently. This will not be possible

after Bill 17 is passed. With the losing lawyer deliberately delaying the process to benefit his client, the automatic deductions continue with no course of action to get the moneys returned. Bill 17 will cause more payers to consider moving out of province.

Bill 17 will create an unfair situation in that it will not treat those paid from Ontario-based companies the same as those paid from out-of-province companies who are not affected by this legislation. Bill 17 is a perfect example of where there is a law for the rich and a law for the poor. The rich will have no trouble at all getting around this bill. They will establish companies outside the province for their payroll.

Bill 17 will increase the number on welfare. Combined with the current recession, increased taxes, both income tax and the GST, many more who are just getting along now will give up trying. The poor will get poorer. Bill 17 will undoubtedly help develop the hidden economy.

Bill 17 will hinder the parents of children from making decision in the best interests of those children. For instance, how many of the current arrears are acceptable to both parties because the children are actually living with a non-custodial parent, or subsequently, after the court order they have decided to try a shared parenting arrangement? Should they incur more legal fees to the benefit of only their respective lawyers and no one else, least of all their children?

How many custodial parents are not receiving support, and content with that arrangement because their ex-spouse is not exercising access, knowing full well that the moment the support is enforced, access is going to be demanded? You can be guaranteed that this is going to happen and be a major concern to many custodial parents.

Bill 17 will make family law cases that much more complicated. Bill 17 most certainly will be found to be in violation of the Charter of Rights and Freedoms, in particular sections 7 and 11, dealing with the freedom from arbitrary measures and right to earn an income. A case can probably be made to show that Bill 17 is an example of discrimination by effect. Passing Bill 17 and making it law before there is any wrongdoing is using civil action to rectify a problem that does not even exist yet.

Of primary concern to the members of Canspact is the lack of clarification as to which support deduction order takes preference when more than one exists. Most of our members are in their second marriage, which statistically lasts only seven years. There are children from the second families in most cases. When this second family splits up, there will be spouse and child support orders for both the first and second family. What percentage is the 16-year-old from the first marriage entitled to? What percentage is the 4-year-old from the second marriage entitled to? The same question applies to both ex-spouses.

Bill 17 is going to cause a snowball effect. The courts are going to be swamped with applications for variance and complaints of access denial. Court time already booked beyond capacity will be taxed even further. More judges will be needed and they are already in short supply.

Alternatives to the Problem: This is my conclusion, so I hope you have a few minutes to ask questions. Family

law in Ontario and probably the rest of Canada is a mess. As part of our presentation, we have included an article from the London Free Press printed 10 days ago. It is the second last page of your second section. Interviewed are Judge Vogelsang, who has dealt with family law cases for the past 11 years, and Alfred Mamo, one of London's leading family law lawyers. To get a good look at how our present system works, please read this article and then decide whether or not we are headed in the right direction with this legislation.

First of all, we would suggest that the method of determining the amount of appropriate support be consistent and fair. There should be some definite guidelines and a quick, inexpensive method for variation. The courts, judges and lawyers should be removed from this process and replaced with accountants or financial advisers who understand financing, budgets and proper planning.

Who knows how many marital problems are caused by poor financing? Maybe some can be reconciled with just this third-party help. This would be the biggest improvement to the present system. Whether this proves possible or not, we must have some standardization in the methods used to determine the dollar amount of support. This is necessary no matter who makes the final decision, whether it is the legal system or financial experts.

Next, we need to copy a page from Judge Hamilton's speech and emphasize to the parties involved that the family unit lives on after separation and divorce and that both of them are still going to be the children's parents and both of them are responsible for their needs, both physical and emotional.

Mediation is probably the best chance to resolve this. Perhaps we should be looking at places like the state of Illinois, where mandatory mediation has experienced tremendous success. In any case, with the exception of abusive relationships, the courts can demand mediation, and they can, as Judge Hamilton explains, be legally put in a position by not specifying sole custody to one parent over the other where they can be involved with their children during specific times: no mention of custody in the order, just different, well-laid-out times of care and control of the children. Only when we achieve this type of involvement by both parents with their children will your problem of collecting support payments disappear or at least improve drastically.

I see my children every day. I feed them, I clothe them, I house them. I take them to Brownies, Cubs and Scouts. I take them to hockey practices and games. I take them to figure skating and whatever other activities they choose, and I pay all my support obligations and much more. I pay because I am involved with their lives.

It took \$35,000 in legal fees for my children and myself to get this arrangement. I am sure my wife spent almost as much trying to stop it. That is money that belonged to our children, and I can assure you that the lawyers involved are not going to offer to give it back when they need to go to university. They had a right to this arrangement from the day we separated, and only you can change the laws in Ontario so that they have this right.



Thirty-three states in the US already have legislation to this effect. What are we waiting for?

According to Statistics Canada, in 1987, the last year for which figures are available, 74,000 children joined the ranks of the single-parent home. These types of numbers are staggering. We need to take a look at how family law is handling these children's needs before we go any further with this type of legislation. Remember, almost half of your own children are going to separate and divorce, and of their children, your grandchildren, 80% to 90% of them are going to separate and divorce. So think of them while you are considering this bill.

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In conclusion, if we do nothing else, we must do our very best to help people separating, both parties, recover from this devastating experience as soon as possible. They must be made to feel good about themselves, improve their self-image, if you will, so they can get on with their lives. They must know what their financial obligations are going to be and for how long. They must know when they are going to be free from their ex-spouse, and they must be involved with their children on a regular basis if they are expected to make a long-term financial commitment to them. Two weekends a month is not regular. You will not achieve your objectives until these changes are made. Hopefully, you can find a better solution than Bill 17. Good luck.

**Mrs Cunningham:** Don, it is good to see you again, and Frank and Dorothy, whom I have not met.

Irene will learn in her position that she will be well informed, living in London and Middlesex county, and bringing a perspective from rural Ontario sometimes to this Legislative Assembly within an urban environment. I have always been blessed with getting some very practical information as I do my work at this Legislative Assembly.

This is a really heartwarming brief as usual, and it is very practical. In 1976, we did a study in London on single-parent families. The recommendations you are making today are exactly the same as the recommendations it took us three years to formulate with 10% of the single parents responding in 1976. That shows you how far we have come when it comes to dealing with our family court system in legislation, and not dealing at all with the practical everyday needs of single parents.

The statistics, especially around second marriages—when we threw those out in 1976 based on good information no one believed that what we are facing today would be a reality, and no one wants to believe what you said but the projections are there. I speak to young women and young men in high schools across this province, and when I lay those statistics none of them believes this could ever happen to them.

I am not going to say very much here today, except I did notice—one of the practical frustrations and inadequacies of our system happens to be attached to one of these briefs, where in fact you wanted to give your wife and the mother of your children more money and our system does not allow that to happen unless you go and hire yourself another lawyer. In my office, I am the other lawyer and I

go down and beat people up, and tell people to just give them the cash and break the rules. That is how frustrating the system is.

I share your concerns. This really incensed me today to take a look at these examples; we have them in hundreds of letters that have come to us. And that is why I was so incensed by Bill 124, because although it was trying to do something it did more wrong than good, and that is my great fear with this legislation today. Why are we not putting our money into programs and into the court system itself?

The paper you told us to read? I read it at the same time I tried to listen to you. It is absolutely right on when it talks about mediation processes and lawyers and judges talking to people. We could be doing it in Ontario, but instead we write all this crap and I spend my time here talking about it and it is just a waste of my time. I very seldom do anything useful in this building.

On that happy note, I will pass the floor to you. By the way, I do not know if your member is here, but you have a good new member and I was glad to see him help you—Kimble Sutherland. He is another guy who knows what it is like, after having been a university student at Western, putting up with the crap there as well.

Thank you, Mr Chairman. I am sorry I am not very professional, but this got to me: 1976 to 1991 and we are still talking about what we should be doing, given the recommendations by parents.

**Ms Kelch:** Excuse me, but you are real professional.

**Mr McIntyre:** I probably have not explained that situation as well as I should have. I brought it up for a specific purpose. There are many non-custodial parents who do not know where their children are—I may have mentioned that in here; I am not sure—and their only method of communication is through SCOE. SCOE does have a heart periodically. They will pass on cards and letters and the occasional birthday present. I brought it up because I wanted my children to have some extra money for music lessons.

My wife had asked for it. It never occurred to me for a second that it would not be passed on, so I just bumped my support payments by the amount she wanted. It was spring and I did not find out until just a few weeks before I talked to Kimble Sutherland that she had never received the money and could not understand it. She is always bitter anyhow, excuse me.

I did not realize she had never received the money until the fall; I never got any response to the letter I wrote to SCOE, a copy of which you have there. Kimble Sutherland talked to them. He gave me the response that my only course of action was to go back and incur more legal fees to get my court order changed so I could pay extra money for my children. He arranged for them to send me my money back, so I got a refund cheque from SCOE.

**Mrs Cunningham:** And you could not give her the money without getting a lawyer and getting the enforcement—give me the terminology.

**Mr McIntyre:** I had to get a variance through the courts to pay more money.

**Mrs Cunningham:** You are not the first one. This brief is filled with examples, but so are the letters we have received. Mr Chairman, I did not mean to take that much time, but it is how I felt.

**The Chair:** Certainly your passion is merited. However, it has filled the time we have for questions.

**Mrs Cunningham:** But I have not used up very much time today.

**Mr Carr:** Mr Chairman, is there time for a quick question for myself?

**The Chair:** Yes.

**Mr Carr:** Were you consulted on the killing of Bill 124 and this bill?

**Mr McIntyre:** We were consulted on neither. We read about Bill 124 in the paper. On anything that affected family law, we have made a presentation.

**Mr Carr:** But you were not consulted.

**Mr McIntyre:** We have never been consulted.

**Mr Sorbara:** I have just a couple of questions and a couple of comments. I do not want to take up too much of your time. We had a great speech from the member for London North; I cannot outdo that.

You say in the last part of your brief, "In conclusion, if we do nothing else, we must do our very best to help people separating, both parties, to recover from this devastating experience as soon as possible. They must be made to feel good about themselves, improve their self-image, if you will, so they can get on with their lives."

We heard from the minister yesterday that he believes that if it becomes the norm that everyone who is subject to a support order and who receives a periodic payment in one form or another, that people will generally in this society start feeling good about themselves; just exactly what you have suggested here, feel good about themselves and get on with their lives. They will feel kind of proud of the fact that they now have that automatic deduction order. Do you think that is going to be the case? Obviously, your organization has experienced—

**Mr McIntyre:** Personally, I do feel good about paying support. It does not bother me for a minute, but I—

**Mr Sorbara:** But the fact that it is automatically deducted is going to give us a new social sense.

**Mr McIntyre:** I cannot agree with that. I lost a business myself through initial order, interim order, at the same time a support deduction order would have come in effect. I did the best I could, but I still lost a business and lost a job over it and it took me two and a half years to straighten out, and I have already told you how much in legal fees.

No, I do not think it can be automatic. I think there are going to be some very bad feelings here, because I am not going to be the only one forced out of business. The middle class, the upper class, everybody is divorcing and separating. It is not confined to just people working on an assembly line some place.

**Mr Sorbara:** Just one other comment, because it is the first time it has arisen in the presentations we have had thus far on this bill. You will recall, Mr Chairman, that the

presenter talked about what some employers might do in the case of being confronted with an automatic deduction order.

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I notice that the New Democratic Party members are filtering out of the committee, but I just want to bring this to their attention, because the point was made by the presenters that notwithstanding the provisions in this bill, you will find employers who will dismiss employees when they find out by way of mail, a registered letter or whatever, that they have to put into place this support order. I want to direct the committee members' attention to the provisions of the bill which appear on pages 32 and 34:

"No employer or person acting on behalf of an employer shall, (a) dismiss or threaten to dismiss an employee; (b) discipline or suspend an employee; (c) impose any penalty on an employee; or (d) intimidate or coerce an employee, because the employer" and then it goes on to say has been required to comply with this order.

Section 39m says that if the employer does that, if he breaks the law, maybe the employee can be reinstated. In any event, nothing worse than a \$4,000 fine can happen to the employer.

The interesting thing, for the benefit of the members of the NDP, is that these are the very provisions, changed to fit the circumstances, that were in Bill 114. Bill 114 was the bill dealing with employee rights with respect to Sunday shopping. The provision said in effect that if an employer did any of those things—threatened, disciplined, imposed or intimidated—with respect to an assignment of Sunday work, the employer could be required to reinstate or the employer would be subject to a fine of \$4,000—the very words. I was Minister of Labour at the time. But the words here deal not with Sunday shopping or the firing of someone for refusing to work on Sunday. This deals with automatic deduction orders.

The current Minister of Labour said in the Legislature about a gazillion times that those provisions are not worth the powder to blow them to hell. He said it over and over again. He said that employers will routinely not give a damn about the Minister of Labour's weak-kneed provisions in the bill. They will just fire people if they do not agree to work on Sunday.

The incumbent Minister of Labour has used the very words, the very same prohibition in this bill. I bring it to your attention only because I think ultimately it is going to prove a great embarrassment to him. If he wants to make a real prohibition against employers firing someone, he had better choose words different from and prohibitions different from the ones he condemned summarily and routinely over the course of about three months.

**The Chair:** Thank you very much for your presentation.

**Ms Kelch:** I just wanted to say one thing to Gord Mills, MPP. I was here when you were talking about whether people, once this garnishment was on them, would get over it. I heard you compare it to your giving to the United Way. What I want to point out is that you have a choice and that person does not. You choose to give to the



United Way and you are proud of it and you want to do that, and that is good. But the other person has no choice. They might lose their job because of it, and they have no choice.

**Mr Mills:** Maybe that was a poor analogy.

**Ms Kelch:** Very.

**Mr Wessenger:** Could I just add a point of clarification to Mr Sorbara's statement concerning the right to reinstate? This is something that has been added to this act; it was not in the previous act. If someone had been dismissed for garnishment there was not an order to reinstate, so it is improving the position of the employee.

**Mr Sorbara:** I just want to comment on that. I have no doubt about that at all. It is an improvement. I actually think it is a pretty good provision. I like the provision. It was the one I chose to require employers to reinstate employees that had been fired or threatened with firing because they refused to work on Sunday. Under our law, workers in retail have a right to refuse.

All I am telling you is that this very provision you have chosen for your bill employs not one of your acts but an act that is the responsibility of the incumbent Minister of Labour, and is a provision that he himself said is not worth the powder to blow it to hell. It does not become the incumbent Minister of Labour to use and for you to defend a provision that the Minister of Labour said is worth nothing, that it will not keep employers from firing people. You need a stronger provision, not in my mind but in his, unless going from opposition to government changes the way you read the laws of the Ontario. Maybe in this case it has.

**Mr Wessenger:** I do not really want to get into the whole question of the employment standards office, but I think—

**The Chair:** I think maybe we will have opportunity to do that at a later time, Mr Wessenger and Mr Sorbara.

**Mrs Cunningham:** You will hear me on that one later.

**The Chair:** I am sure we will.

**Mrs Cunningham:** Once a person has gone from the subtle realities of the workplace, whether it is on Sunday shopping or somebody they do not want to hire because they have this additional process and costs, there is no law that can protect it. I did not like it in Bill 114 and I do not like it here, because I do not think it means anything. It is just another piece of crap that makes us look like we are trying to do something. You cannot judge or legislate attitudes and that is what we are trying to do.

**Mr Sorbara:** Ask Shelley Martel what she thought about it. Ask Bob Rae.

**The Chair:** Thank you, Mrs Cunningham. I think you are quite right, we should discuss—

**Mrs Cunningham:** I know what the NDP thought of it in Bill 114. With due respect, we did not like anything about that bill, either the Conservatives or the NDP. That is the way it goes.

**Mr Sorbara:** You were just negative, Dianne.

**Mrs Cunningham:** No, I was not.

**The Chair:** Can we allow the witnesses to retire? Thank you.

**Mr Sorbara:** They could stay if they wanted.

**The Chair:** I do not think this is a discussion that they need to hear.

**Mr Elston:** Mr Chair, while the next witnesses are coming up, can I ask the parliamentary assistant or the Attorney General's staff if a question can be asked of an employee or prospective employee about their status of payment in terms of a job; if they ask me, for instance, if I had a support order outstanding against me? Are you making any amendments or changes to prevent that discrimination?

**Mr Wessenger:** There is nothing specifically in the legislation with respect to that.

**Mr Elston:** Should there be? We are not supposed to discriminate on the basis of marital status, but what about support orders? Because this is a way of people—

**Mr Wessenger:** I think that is something we would have to think about. It is certainly a point that I am going to look into.

**The Chair:** That is an excellent point.

#### FAMILY TIES

**The Chair:** I would like to welcome a presentation from Mr Johnston on behalf of Family Ties. Mr Johnston, as you are aware, you have half an hour, give or take, for discussion. You can use that time as you wish. Typically it is divided in half; half for your presentation and half for questions. Please feel free to start when you are comfortable.

**Mr Johnston:** I am glad I was here for the presentation before mine. It expressed a lot of similar views. I hope I can express it as well.

The bill before us is going to affect a lot of people adversely, I think. This is a personal issue for me in a lot of ways. I am an employer and I am a separated father who has not seen his kids for about 18 months now. I have been in court more than 36 times in the last three years to try and get any of this mess solved. I have been garnisheed by SCOE, which got straightened out, regarnisheed later, which we are in the process of straightening out, and garnisheed once more since even though we are already discussing that once in court.

I applied for access this Christmas and it was granted: one day. It was ignored and I went back for a clarification order and it was put over to the next trial date, which I understand—I am really overjoyed—is coming up in June. We got a pre-trial before that just in case they decide they want to give us anything.

The whole situation of family law, as far as I am concerned, in this province is in a mess. This bill, while it has some merits to help some people sometimes, I feel is punishing the majority of innocent parties. Besides, is SCOE set up to handle the increased load of this, let alone the load it is carrying now? The ineptness of that is illustrated in the last page of my submission, which is an actual copy I received from the SCOE representative, the third one I have spoken to, on trial dates; yesterday, where I spent all day in Brampton court.

There are a few question marks on that last sheet. One is for the initial \$12,000. They thought an order had been ongoing for a couple years where in fact it had been squashed after the first or second payment had been made. They had not been notified, so it had been on the books. So that one we straightened out originally. We are back discussing it one more time and we are still working on that. But if they can do this now, what kind of mess are we going to be in when every case of support has to go through that office? You know, if they could prove to me that they had a new computer that was not going to be doing these things—

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The second thing I might draw to your attention is, the \$150-a-week payments that I am supposed to be making are very clear there. Immediately following those are \$50 question mark payments that they have not been able to sort out yet. We have agreed between the lawyers in the case that it looks to them like my figures are correct, but this has been ongoing for about a year and a half now, since I put in my initial dispute to reduce my garnishee from 50% of my pay. It was reduced and hopefully it will stay reduced. By the time we get this settled in June, if it stays reduced, then I will only have one more court case to look forward to, which is after this bill goes into effect and my new automatic order for up to 50% comes through again. Okay? Then I will only have to go back to court once more, I hope. So that is just on the personal side of how this bill is going to affect me.

I am also an employer and I can see their point that we do not need any more jobs to do for government. Collecting on the GST right now is one awesome example.

I wish I had time to go right through this whole issue here. If we just go through the summary, which is the third page in, the most important one I think is "Why Delinquency?" I apologize for not getting these pages numbered, but it is about halfway through the first section. The most important thing I think we need to go along with this bill's implementation—you know, if it gets implemented as fast as it has been put through so far, I am expecting it any day now. People are delinquent for reasons. If you have time to go through this whole thing later—I hope you will take the time—my most important thing that we need would be guidelines for access. You know, the costs of raising a child are out there. The welfare agencies use them, minimums and maximums. The minimums, as far as I am concerned, would save the taxpayer from the burden where they make an agreement between themselves knowing full well that we are going to support the kids anyway, where fathers can be let off the hook or if she does not want to see him, she can make agreement for no support, just using the kids as extortion to support payments, to either get rid of him or to have her own freedom, whatever.

I have tried to lay out a few cases in here that show a lot of the concerns that I have, that I hear from people in my dealings with the different groups that I am involved with. I suggest that these are women's groups, men's groups, I hear from both sides of the story. The most common women's issue I hear is the fact that they want dads to see the kids more. But there again, you have to deal with

the emotional issue and dad being in a condition to deal with her or deal with the kids at the same time.

The delinquency is justified, as far as I am concerned, if there is an unfair support order. We have the normal frustrations of the economy, second-family status, additional family burdens, health problems—real things. A man does not have to be a criminal to fall behind in his support payments. It does not take long if you are paying 80% of your take-home every week, or not paying it.

The court costs that you are going to have to lay out in times of need when you are having problems are just horrendous. You cannot really do it on your own. You are upsetting the relationship with the kids and with your ex every time you try and get a reduction in a time like that. I suggest that while the family is together the parents and the children both absorb any fluctuations, rises in pay, losses in pay, and with these standardized support obligations, say, a percentage of net income. Then any raises that come in for dad would reflect that, going to the kids later, as well as if dad is off work and he is in a high tax bracket and already has paid twice what it actually costs to raise kids in this province. There is no need for anybody to go after his pay because he has already paid a lot more than he would have needed to give those kids an adequate upbringing.

I have too much in here to get into in the time set out, but again, I hope you will read through it when time is available. Let me just read my response to Bill 17's principal purpose.

It fails to address the real issues of family and child law reform in a reasonable and just manner for all members concerned. It is a feeble and weak attempt to place a Band-Aid on a wound, when major surgery is required. The government seems to be lifting a big stick to become a delinquent bill collector rather than facing up to its prime responsibility, which is to provide processes and mechanisms of benefit to the families of Ontario, especially the children of broken homes, their parents and members of their extended families.

The government of Ontario, by passing Bill 17 into law alone, will by its actions display to the people its inability to provide family and child law reforms that are desperately needed. Sidestepping the real issues instead of solving the real problems is going to get us nowhere. Bill 17 will negatively impact and hurt a great number of people, and it is about time we had recognition of all facets of the family situation by the legal profession and the government as well.

I urge you to take the next responsible step forward and work towards solving these other outstanding issues which Bill 17 fails to address so that your bill-collecting procedures will not be a universal system but an exception.

The shared parenting is at the basis of our whole program. Things like mediation, family counselling, getting rid of the adversarial systems in our courts, stressing to people involved in these situations alternatives to divorce and helping them work through it would sure save the taxpayer a lot of aggravation and money. People can be educated to the fact of why their kids need to see them



afterwards and how their behaviour is hurting them, and that should be, again, a part of the court system.

In the different groups that we have, we get a lot of calls in a month. With the small ad in the Toronto Sun personals column, I used to get probably 1,800 calls a year, if I had done it for a whole year, from people who did not know where to go, did not know where to turn, could not afford to turn where they had to go.

By just ignoring the whole system it is just causing a lot of emotional drain and inflicting needless hardship on a lot of people. Getting funding for the kids and mom—unfortunately it is mom most of the time instead of both—is an important issue, but my main concern I guess lies in whether this can be implemented, whether we are not creating a monster by throwing everybody into the same basket, and you know, whether they should have the insult of all being lumped together.

Support payments where somebody is just trying to get even, I can see taking steps to recover, but as far as I am concerned, the steps are already there with garnishment. We have the processes now. It does not need to have a new law to address it, the same as access enforcement does not need a new law. If we just would look at contempt charges realistically and enforce the laws that we have equally, we would not need all these new laws. We have to address the biases in the systems to straighten this whole thing out.

1630

Now, I have a few facts on the families here. These come from the California Joint Custody Association, which is largely responsible for a lot of the US states that have adopted similar—as far as I am concerned, reasonable—measures. The whole status quo and win-lose battle scenarios—it would be nice to be a thing of the past. With mediation availability we do not have to look as far as the United States for any of this; we just have to look to the Hamilton courts and see what kind of results you are getting down there in the Unified Family Court, where people like Judge Wallace are refusing to grant interim custody orders because they recognize the problems that lie therein with the status quo and things.

What the family is going to end up as is a really fragile thing, and with all the expense and the uphill battles that everybody looks at, there are too many guys walking away and saying it is not worth it, even if they do get access every second weekend. Every-second-weekend access sounds like a good thing until you look at it like it is four days a month. You get to see your kids four days a month. I could not believe it when I first got going that I asked the judge if I could phone the kids every day. No, that was an inconvenience for my wife, she said, and he did not push it. I wanted to drive them to school every day; that was an inconvenience. We need an education system put into the system that straightens her out, or the custodial parent, that she has a responsibility too to act responsibly, in the best interests of those kids.

A lot of these other groups that I have on the back of my presentation now are all across Canada and I wish there were a lot more so that we could make this happen for sure. They are all volunteer organizations. One I might draw to your attention is Big Brothers. The Big Brothers

organization is always crying for help. My position is, I would like to see the real dads being the big brothers to these kids.

There is a long way to go here, and I would like to maybe ask this government where it is going, I guess, is the main thing. Are we all wasting our breath talking about these things, or will they look at the reactions? What is going on in states where these things are implemented in the United States?

A friend of mine is fighting for custody in California. He wants sole custody and she wants sole custody. The worst he is going to get is joint custody. That is the way it should be everywhere. You have joint custody when you are married, and that is the way it should stay unless it is proven otherwise, because we have to keep people involved with their kids afterwards. We are ending up with a generation of parentless kids out here who are ending up on the streets downtown.

So anything that this government can do to help some of these groups that are pushing for some good things I will be happy to see. I have some incredible stories in here for you of actual cases that I know of and I am involved in right now that are pretty heartbreaking. Please read this as you can, and let's get the rest of the thing looked after too, not just money.

**The Chair:** Thank you, Mr Johnston. We have only a limited number of questions for the three caucuses, perhaps only one question per caucus.

**Mr Mills:** I have not really got a question to ask. What I am hearing here kind of makes me shudder to think of the future of people getting married, what is going on in the world today.

**Mr Johnston:** A lot of people are thinking that today.

**Mr Mills:** It is scary. I suppose, sir, I would like to thank you for this, because you have gone to a great deal of trouble to prepare this and you must have a really great interest in it, and I will read it. Is that your picture on the front?

**Mr Johnston:** Yes. It is me and my kids.

**Mr Mills:** You and your kids.

**Mr Johnston:** And my wife.

**Mr Mills:** When I see such a happy family, whirling in my mind it says to me, "What on earth went wrong here and why are you here?"

**Mr Johnston:** That picture was taken a week before she walked.

**Mr Mills:** I have grandchildren that age. It just boggles my mind. Thank you for coming.

**Mr Sorbara:** It is late and I just want to thank the presenter for his views. I expect and hope that the ministry and the minister and the government will at least look at whatever recommendations you have to fine-tune Bill 17. You should know that I recall the vote in the House. All parties voted in favour of the bill in principle, but we have some significant differences on what the details should be and perhaps reviewing your suggestions on both officials and those on the committee can be heeded in that fine-tuning.

**Mr Carr:** I want to also thank you for your very fine presentation, and I think, more important, for sharing your own personal experiences which must be very tough. I think that is probably the toughest part, and we thank you for that.

I just have a quick question about the access as well. We have heard about access being a big problem, and obviously it is in your personal case. By your best guesstimate in talking to the various groups, what are the numbers involved where access becomes a real problem? Is it a very high percentage?

**Mr Johnston:** In my personal experience, I would say access is a problem in about 99% of separations. It may not happen on an ongoing basis, but once in a while somebody is going to say to somebody, "I'm mad at you. You're not getting the kids," and if we do not have somebody who is going to say, "Sorry, you're in trouble," it will continue.

**Mr Carr:** What we are looking is a bigger problem because I think you might be aware, as I mentioned before, that I was shocked when I heard that 70% of the people were in default, but then when you get into it they are not really in default, a lot of them are paying something. Then when you get into the access questions—as they say in marriages, I guess, it is six of one and half a dozen of the other—both parties have problems. Do you see this problem with Bill 117 only addressing the one side of the issue when as opposed to the overall solution including the access?

**Mr Johnston:** I would like to see the government address the whole situation and end up with people walking away happy, contented, paying what they are supposed to pay, living up to the responsibilities of exercising their access in the kids' best interests and also having the joys of growing up with those kids and learning how to deal with the other parent effectively, or have institutions that can stand up between them like access centres for dropoff and pickup. There are a lot of good ideas on how to solve this situation which are just getting ignored.

**Mr Carr:** I know that my predecessor in Oakville South, Terry O'Connor, who practises family law, has some ideas about banking of access and so on because I know some of the stories about having to wait till June now are very traumatic. Again, I just want to thank you for sharing them and bringing them to light and taking the effort to come out and make this committee aware of it.

**The Chair:** With the committee's indulgence, before we adjourn, I note that we have a very active committee with a lot of questions of the presenters. As the timing is such that tomorrow we have a great number of presenters whose presentations will only be for 15 minutes in total, I would like to suggest that we continue a rotation of questions, that obviously all caucuses cannot be represented with each presenter. However, if people have a particular desire, with the indulgence of the other committee members, they could use the majority of that time. If members have difficulty with that suggestion, perhaps we could discuss it in subcommittee.

1640

**Mrs Cunningham:** Mr Chairman, on the point of how we are working and what not, I think we became more amenable this afternoon, but I suppose it can change from time to time. The recommendations that the staff are keeping for us, it must be very difficult to go through these documents, but can we keep them updated as far as possible, recommendations for change?

**The Chair:** Do you mean specific recommendations or requests for information?

**Mrs Cunningham:** Some are requests for information but others are the recommendations.

**Mr Carr:** Like they did in the written presentation. They made a one-line summary.

**Ms Swift:** Yes. Those are current to last Wednesday, I believe.

**Mrs Cunningham:** That is right.

**Ms Swift:** Are you asking that they be available on a day-to-day basis?

**Mrs Cunningham:** I do not know what is reasonable, except that my very reason for not wanting to deal with the amendments was that I knew it would be heavy, and it is. I have got some 17 recommendations just today where I have put different ones.

**Ms Swift:** Yes.

**Mrs Cunningham:** Some of them may be worth while and others may not; I do not know. But are you keeping track of them and how can we really get them?

**Ms Swift:** Oh, yes, I have been keeping track of them. Tomorrow looks very heavy. I do not know if we will be able to keep them up to date for Thursday. I think we will be able to have probably today's recommendations for you by tomorrow afternoon, by the afternoon session, I would think, maybe before that.

**Mrs Cunningham:** That is fine.

**Ms Swift:** Sort of a day or a day and a half would be about, I think, what we could handle.

**The Chair:** An incredible task in front of Susan for tomorrow morning.

**Mrs Cunningham:** I know it is.

**Mr Carr:** I have a question on that. I know the written summaries are there and recommendations. I was just wondering, there might be the odd case where somebody gives an additional recommendation during his presentation and so that, as well, is being recorded.

**Ms Swift:** Yes, the recommendations are both from the oral evidence that you receive and from the briefs, and I take notes as to recommendations that are being made.

**Mr Mills:** Mr Chairman, I am sorry, I was talking to my colleague when you earlier mentioned something, but the process for tomorrow when we have got that heavy list, is that going to be the same sort of time?

**The Chair:** What I suggested, Mr Mills, was that we would rotate as we have been, Conservative, New Democratic and Liberal, in this order, but that obviously it may be not possible during a 15-minute presentation for members



of all caucuses to ask questions. The caucus that would be left over would be the one to start with the next presenter. Where there is a particular desire to ask a number of questions, that caucus can do so with the consent of the rest of the committee and then the rotation would—let us say that Mrs Cunningham, for example, had a number of questions of a particular presenter and that time was used up. For the next presenter, the government caucus would initiate, or the same way within that same rotation. Okay, sir?

**Mr Mills:** So what would happen, in theory, if someone took up the whole 15 minutes with the presentation?

**The Chair:** They would do that with the indulgence of the committee.

**Mr Mills:** Then we would have to get the indulgence of the committee to ask questions. Is that what you are saying or not?

**The Chair:** No, what I am saying is that at the end of that time there would be no time left for questions. However, let us say that Mr Elston or Mr Kwinter had last questions with a particular presenter, then at the end of the next presentation the Conservative caucus would have the opportunity of initiating questions, and so on, and on to the New Democrats and back to the Liberals. Simply because we have 15-minute presentations, it will be impossible for all caucuses to ask questions.

**Mr Mills:** I would just like to conclude my question-statement. I have a lot of difficulty with this time frame and I think we are here, like my colleagues across the road there, to listen, and it is rather tough to sort of get a grip on things with this time constraint. I would think—I was not party to setting this schedule and I realize it is difficult—perhaps we should consider in the future this jamming in—I think tomorrow is just going to be horrendous to try and get any sort of scope to it.

**The Chair:** That is precisely why I made that suggestion, sir, in anticipation of tomorrow's presentations. We have a great number of presenters and we wish to hear as many as possible.

**Mr Mills:** Yes, I realize it is difficult. Thank you.

**The Chair:** Thank you, sir. Can we adjourn and immediately following this meeting the subcommittee will be meeting after stretching.

**Mr Sorbara:** Before we adjourn, on your process—look, you are the Chair, right, so you have the right to set the process. But actually, the things works best if there is more flexibility and fluidity. For example, there may be some presenter who I, or Mr Elston or Mr Kwinter has no interest in questioning, so the fact that we go first on the rotation means zip. There are others we might want to question even though we have just asked a question beforehand.

Now tomorrow, friends, we set this schedule. There are not going to be any questions, and if you are an effective Chairman, you will say, "Look, I would love to have you ask some questions but we are already running 20 minutes late. I am going to have to exercise my prerogative as a Chairman and go on to the next presenter," But then when you see some time becoming available, you might judge Gordon Mills because he has always got a speech or two to make and just let him have it, give him the opportunity.

So look, you are the Chair. If you want to do that, that is fine, but I think you will find that as you grow in the Chair, you will feel more comfortable letting the thing evolve as it needs to evolve. Where we have a group that we particularly want to speak to, let us do that. We are not going go win the next campaign because we got more questions than they did. After all, they can always see the minister and we can rarely do that; he does not come to our caucuses. Let's adjourn.

The committee adjourned at 1647.

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## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

**Chair:** White, Drummond (Durham Centre NDP)  
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 Harnick, Charles (Willowdale PC)  
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 Mills, Gordon (Durham East NDP)  
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 Sorbara, Gregory S. (York Centre L)  
 Wilson, Fred (Frontenac-Addington NDP)  
 Winninger, David (London South NDP)

**Substitutions:**

Cunningham, Dianne E. (London North PC) for Mr Harnick  
 Elston, Murray J. (Bruce L) for Mr Chiarelli  
 Kwinter, Monte (Wilson Heights L) for Mr Poirier  
 Murdock, Sharon (Sudbury NDP) for Mr F. Wilson  
 Wessinger, Paul (Simcoe Centre NDP) for Mr Winninger

**Clerk:** Freedman, Lisa

**Staff:** Swift, Susan, Research Officer, Legislative Research Service





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## Legislative Assembly of Ontario

First Session, 35th Parliament

## Official Report of Debates (Hansard)

Wednesday 13 February 1991

### Standing committee on administration of justice

Child and Family Support  
Statute Law Amendment Act, 1990

## Assemblée législative de l'Ontario

Première session, 35<sup>e</sup> législature

## Journal des débats (Hansard)

Le mercredi 13 février 1991

### Comité permanent de l'administration de la justice

Loi de 1990 modifiant les lois  
relatives aux obligations  
alimentaires

Chair: Drummond White  
Clerk: Lisa Freedman

Président : Drummond White  
Greffier : Lisa Freedman

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday 13 February 1991

The committee met at 1004 in committee room 1.

### CHILD AND FAMILY SUPPORT STATUTE LAW AMENDMENT ACT, 1990

### LOI DE 1990 MODIFIANT LES LOIS RELATIVES AUX OBLIGATIONS ALIMENTAIRES

Resuming consideration of Bill 17, An Act to amend the Law related to the Enforcement of Support and Custody Orders.

Reprise de l'étude du projet de loi 17, Loi portant modification des lois relatives à l'exécution d'ordonnances alimentaires et de garde d'enfants.

**The Chair:** Before we start today's proceedings, the clerk informs me that the subcommittee report from last evening's meeting is not as yet ready. It should be distributed this afternoon, so we will be able to discuss it at that time.

CYNTHIA LUCAS

**The Chair:** Without further ado, we will move on to the people who are presenting. Good morning, Mrs Lucas. Welcome to our committee. If we have a 15-minute time, typically the way that is divided is your presentation and some time for questions from the various committee members. You can divide that, however, in whichever way you wish. Please feel free to start whenever you are comfortable.

**Mrs Lucas:** Very good. I am a participant in the support and custody enforcement program referred to as SCOE. I receive child support for my son. I did not petition the courts to receive spousal support, nor do I receive same. I paid just over \$9,000 in legal fees to obtain my court order. Every participant in SCOE has a court order, and legal costs were incurred to obtain that order. Court orders are not free.

My order states that I had to pay my ex-husband \$22,750 for his interest in the matrimonial home where my son and I continue to reside. The order states clearly that he is to pay support for our son on the first of each month. That support is paid to the director of SCOE, who in turn sends it to me. This order does not say he can pay it on the third of the month or the 10th of the month; in our minutes of settlement and separation agreement, he agreed to pay it on the first. Had he not agreed, we would still be in litigation trying to get this matter resolved. My ex-husband is fully aware of his financial responsibilities to his child. Bear in mind that he has a copy of the order as well. My order has been violated 16 times in the past 24-month period. Did I pay \$9,000 for an order to be ignored?

SCOE, as it stands, is not working. Bill 17, however, is too draconian in nature. Legislation that is middle of the road is what is in order. Tie SCOE's computer system in with the income tax form for results. Payers who do not pay according to the terms of their orders are penalized and payees are recompensed for their inconvenience because

child support payments are late. The provincial government stands to gain the difference between in the revenues that would be generated.

Support enforcement should remain an issue among the government, the courts, the payers and the payees. This issue should not involve employers. They played no part in the issuing of the orders.

The prospect of being penalized for late payments will soon jolt payers back into the reality of meeting the financial needs of their children. My solution will keep the support issue where it belongs: the parties who are involved. I did not calculate these formulations with the intention of making money for the government. However, it turned out that way simply because the person paying support is the person earning the higher income. That is why they pay support initially.

Should a payer experience a serious change in financial circumstances, he or she has the obligation to return to the courts to ask for a variance in the original order. The better ability one has to meet support needs and the more payments he or she makes late, the more that person will be penalized for manipulating and abusing the system.

Bill 17 as it stands will result in more complexity, as it involves more participants. My system will include those who pay weekly, monthly, seasonally, semi-monthly. I ask the government to consider a viable alternative to Bill 17.

To avoid penalties come income tax time, payers will be more receptive to sending a series of post-dated cheques to their SCOE branches or even providing SCOE with chequing account pre-authorization. I have provided my outline of implementation as to how this is tied in with the income tax form. Also provided are copies of my SCOE case file, documents, the computer printouts.

When a support payment is received by the SCOE office from my ex-husband, that payment is recorded in the computer file. I understand that is a manual transaction. It is my suggestion that if that payment is late it can be noted beside the payment amount itself by way of an asterisk. I already receive an annual statement from the support and custody office stating the amount of support I have received in the previous calendar year. A notation can be made on that statement as to how many payments were late, thereby providing me with the information I need to do my own calculation. A tear-sheet similar to the Ontario tax credit sheet would be included in the income tax form and would be used only by those parties involved with the paying or receiving of support. If payments are made in accordance with the court order, even payers and payees will not be completing the form.

Hopefully this system will provide the impetus necessary for parties to meet their financial obligations according to court-order terms without complicating the issue further with the involvement of additional participants. Thank you.



1010

**Mr Carr:** I first want to thank you for coming here and taking the time to explain your personal situation, which sometimes might be very tough. We appreciate it. Could you give me a reason the violations happened 16 times? Do you have any reason there was this large amount?

**Mrs Lucas:** I believe it is simply because this system allows recipients like myself to be jerked around, for lack of a better phrase, by my ex-husband. I have even talked to my legal counsel about dropping out of the support and custody program, because every time that payment is late that order is violated. That is exactly what it is. He agreed to those terms or I would not have the order. That is the whole point. I paid a lot of money to get that order, and I do not care if it is a week late, a month late or a year late.

He was paid his money, because I went as far as a pre-trial in the litigation system. I had a very good case for exclusive possession of the matrimonial home for me and my son for the next 10 years—I was told that by a pre-trial judge—but at that point, I just wanted to get everything wrapped up. I figured, “Fine, I’ll pay him for his interest in the matrimonial home”—this is not spousal support; this is support for our child—figuring, “He’ll look after his obligations like I’ve looked after mine.” Unfortunately, it does not seem to have turned out that way.

**Mr Carr:** I did not know if he just did not want to pay or if he could not financially, or if there had been some problems?

**Mrs Lucas:** It is not the ability to pay. I believe the ability to pay is there, and I believe it is there with the majority of cases. But I know that is a very busy office. I have tried numerous times to get through on the phone; it is very difficult, and they are busy. That is a big department, and I do not believe a lot of money is allotted. I understand there will be another increase in the annual budget projected for this year, but it started in 1987, and there are a lot of problems out there. I do not believe it is the ability to pay as much as the fact that court orders just sometimes do not mean anything to people, or not what they should.

**Mr Carr:** One last one. You mentioned the income tax form. I was just wondering if you had gone so far as to put something together about how you would see it work. I know you explained it a little, but did you have something written?

**Mrs Lucas:** Yes. It was my understanding that the committee would be provided with these copies.

**Mr Carr:** That might be the package I got from the clerk this morning. Okay, it was. I just received it when you came in. I will get a chance to read it.

**Mrs Lucas:** It is all detailed there, the different levels of income, because it is tied directly to the federal income tax. We only have three levels of federal income tax now, and this system is directly tied in with all of that.

**Mr Wessinger:** Thank you for appearing today. One thing I would like to advise you that may bring some improvement in the existing program is that SCOE is actively

pursuing the electronic funds transfer and pre-authorization withdrawals from the debtor’s bank account, and hopefully that can be implemented, which would—

**Mr Elston:** The payer’s?

**Mr Wessinger:** The payer’s bank account, correct.

**The Chair:** We are still working with your legislation; still “debtor.”

**Mr Wessinger:** So hopefully that would help.

**Mrs Lucas:** I understand that with Bill 17 it would be like a forced deduction, but, again, you are involving employers. I do not believe this is an issue that should involve anybody but the parties who are involved at this point.

**Ms S. Murdock:** If it has been unsuccessful thus far, with the parties who presently exist—and it has been, in terms of payment and the moneys that have not been collected; I think it is well over \$330 million not collected in this province—then why do you believe it is going to work that much better with maintaining the same parties and not including the employer?

**Mrs Lucas:** Because nobody likes to fill in an income tax form—well, a lot of people do not; I should not say most people—a lot of people do not, and I think it will only take one year of a person having to sit down and do his own calculation of how much of a penalty he is going to have to pay, dollars and cents, because he did not pay his child support payments on time.

**Ms S. Murdock:** And then who collects that?

**Mrs Lucas:** That would have to be between the provincial and the federal governments, but the federal government is already involved in child support anyway, because the person who is the recipient has to include it in his income tax form and the person who pays it gets to deduct it. So as far as I am concerned, the federal government already is involved.

**Ms S. Murdock:** So the federal government would become the collector for the provincial government.

**Mrs Lucas:** Right. It would be like a levy that would be on the income tax form. The person who receives it late would receive a rebate back and the government gets to keep the difference between, because in the formulation the person paying the child support makes the higher income. That is why they pay support in the first place. So it could be money-making for the provincial government.

**Ms S. Murdock:** But you fill in your income tax once a year. You are not waiting a year for payment, are you, to rebate to the—

**Mrs Lucas:** It would be just like an Ontario tax credit, just like we have them now.

**Ms S. Murdock:** So you would get it once a year.

**Mrs Lucas:** Right, just for being inconvenienced for receiving those payments late. There is not a deterrent there for the person paying them now. That is the problem.

**Ms S. Murdock:** No, in the present system it is weeks before they even get around to realizing that the payment has not been made.

**Mrs Lucas:** That is right. But if there was a little muscle to it and they realized that if they do pay late they are going to be penalized for it—

**The Chair:** Thank you very much, Mrs Lucas.

NANCY ZINNER

**The Chair:** Nancy Zinner, please.

**Mrs Zinner:** I just came in, so I do not know your procedure.

**The Chair:** I understand you do not have a brief with you. However, it was distributed to committee members before the hearings, along with the other packages. We have only a quarter of an hour. Spend as much time as you like with your presentation, and then the members of the committee in rotation will quite possibly have some questions for you. Proceed when you are comfortable.

**Mrs Zinner:** Good morning. I came this morning because I do have some very valid criticism of the things that have happened to me in the last 10 years. I understand things are so much better now. I called them antique 10 years ago, the laws which were available to help me in my plight back then, and I just feel I am a victim of time.

I will start by saying at this time that I am ready to really forge ahead with my fight. I have located my ex-husband and he has not changed. He still has the same views, I presume—I have not spoken to him—about non-support. He has very cultural beliefs about women, that if a woman did not work during the marriage she does not deserve anything. I did not work. I just was the hostess in his construction company and looked after five children. I do not know if that should—

**Ms S. Murdock:** And that is not work.

**Mrs Zinner:** No. Anyway, I will start by telling you that Mr Zinner is a very wealthy man right now. He is in construction in California. I have approached lawyers in Markham and they have told me that California has a 50-50 law. When you are married, everything is community property. Mr Zinner entered a marriage—I do not know how much he had when he entered his third marriage, but his wife and he have opened a company and all the information I am going to give you is not hearsay. My eldest son, who is 23, went down to California and has found this out first hand.

Mr Zinner has a company which he has worked out that his wife owns and is paying him a very minimal amount for. I have heard it is \$3 a month, but I do not know that for sure. He is claiming my children on his income tax returns. He is not supporting at all; he has not ever since the divorce. You probably have a copy of the judgement of \$119,000 for 1983. During our marriage I was very trusting and I lent this man \$80,000 which had been mine from the sale of a home, and he just up and left with that, and that was virtually all I had asked for when I asked for the divorce. I said: "I don't want anything. Just give me that so I can have my home for my children."

The divorce decree stipulates, because Mr. Zinner even fought that in the divorce, that he has no equity in that note. That is what that clause is in the support and the alimony part of the decree, so therefore I was really getting

child support and that \$80,000 was supposed to be for my home. Consequently I did not get anything so I wound up in Ontario Housing. I am sorry. I thought I was all right. You guys make me nervous.

**The Chair:** Please take your time. Take a couple of moments to compose yourself.

1020

**Mrs Zinner:** Anyway, I had the suffering in Ontario Housing. I was fortunate; I got into a co-op, which is still subsidized but it was like night and day. I had made a vow that once my youngest, who was zero when I was divorced, went into school, junior kindergarten, I would get out in the workforce. So what I did was I just stayed at home, I looked after the children and secured myself, I thought, emotionally. I went to Centennial College and now I am working for the Ministry of Health in Whitby Psychiatric Hospital. I am in an RNA nurse program. I have another job on top of that. I supervise the hospital laundry, but that is neither here nor there. I am off mother's allowance, but I understand that mother's allowance wants to be reimbursed for the money I have received over the last 10 years, which I think is fair and right.

I reviewed the pamphlet that Lisa sent to me, Bill 17, and all I could think of really when I read it was I wish I had this in effect away back then, because a lot of the things that are initiated in this have covered the deceit that men can use to either hide things or whatever. One in particular was that the director can now, if it goes through, define "income." He can use his own judgement to decide what is income to a non-supportive father, and if it happens to be his wife, then that is up to him. This is how most husbands are doing it. They are signing everything over to their wives.

That is basically it. I think it is a fantastic thing if it goes through. If it does not help me, it will help other women.

**Mr Carr:** Again, I want to thank you for coming here. For some of the other groups that are working for lobby groups, it is a lot easier because they do not have the personal situation, and I appreciate your doing that. It must be very emotional. Forgive me for being a little bit personal, but did you receive any money from your husband at all?

**Mrs Zinner:** Not a cent.

**Mr Carr:** Not a cent. If you got the amount that was supposed to come under support, would that have been enough to help you with the job or would you still have been in a difficult situation?

**Mrs Zinner:** Oh, no. At the time, when the children were young, I would have received \$1,400 a month, which is adequate for rent and whatever, and I still would have, of course, for self-esteem, gone out and worked, but we would not have suffered like we did.

**Mr Morrow:** I just want to take a second. Thank you very much for coming down and talking to us. It is much appreciated. Thank you again.

**Mrs Zinner:** You are welcome.

**Mr Kwinter:** Mrs Zinner, when your husband was in Ontario, was he self-employed?



**Mrs Zinner:** Yes, he was.

**Mr Kwinter:** Just so that there is no misunderstanding, it is my interpretation of the Bill that if he were self-employed and if he had structured his finances in such a way that he was not showing any income, there would be no provision under Bill 17 for you to have any kind of recourse to it other than a garnishment or any of the other things that you could do, like getting a court order to attach his assets.

This bill provides that those people who are being employed and are getting regular payments can have those attached initially and submitted to the support and custody enforcement branch office for distribution to the child and support person. I just wanted to make sure you understood that, and unfortunately, and I really feel it is unfortunate, there is a strong possibility that your situation would not in any way be resolved by this bill. I just want to know whether you understood that.

**Mrs Zinner:** That is why I mentioned the definition by the director, because although it is not shown on paper—

**Mr Kwinter:** What that definition says is that if you are in fact a wage earner who is getting regular payments, and you are getting additional payments, the director can ascertain that those are additional payments that can be included. But the operative situation is that you have got to be an employee somewhere who is getting regular payments that can be attached through your employer, and that if you were a self-employed person, regardless of where your income was coming from, you would not be affected by Bill 17 and you would have to have the other recourse that you have now under the law, of getting a garnishment against the company or getting a court order against his assets; just as long as you understood that.

**Mrs Zinner:** I see a big battle. Thank you.

**The Chair:** Thank you very much, Mrs Zinner. I think your testimony, although I appreciate it is very difficult for you to offer, is the very kind of testimony which gives real value to our hearings.

GAIL FORBES

**The Chair:** Ms Forbes, I see you have been observing the proceedings so far, so I need not give you the full introduction, but simply perhaps you could mention your name into the microphone and proceed.

**Ms Forbes:** Good morning. I am Gail Forbes and I thank you for the opportunity of speaking with you today.

For the past 10 years I have been entitled to receive child support. Due to difficulties I experienced in receiving payments, in 1982 payments were ordered to the Family Court and forwarded to me to ensure proper payments were made. This did not prove effective since my name was near the end of the alphabet and it took a long time to get to my file to start enforcement proceedings.

In 1986 I registered with SCOE as a result of the new law and with the belief that my troubles would be over. The SCOE office in Oshawa appears to have a heavy workload, not enough staff and little training as to dealing professionally with the public. When support payments are

late and you call the 1-800 number, there is a series of recorded messages. When you wait to speak to a counsellor, you are told you are one in 80,000 cases and that your case will be reviewed two to three times a year.

This statement is just a little hard to deal with. Should one feel comforted that you are in such a large group? Do you tell your children that it is okay, since there are thousands of other children without food tonight, and two or three times a year someone is going to look at the file?

You are also told to go now to your local office for assistance. When you do go to the local office, for the most part you are treated as the culprit instead of being treated with dignity as the customer or the public. SCOE explains that if a garnishee is begun against the payee and the payment is received at the last moment, then the procedure is cancelled. Therefore, the payee quickly learns to stall until the last moment, and SCOE avoids starting a procedure that could be costly in time and money, but where does that leave the children?

There does not seem to be any strong teeth in the current law to make certain support payment are made on time, in full and without hassle. What do the children learn from all this? That they are not worthy, not cared for. They are having enough problems simply growing up without this additional burden. How can a parent instil values for a lifetime so that the children become good citizens and community leaders of tomorrow when there is no law which enforces their basic right to receive support?

1030

There are those people who think they are not affected since they have not been in a family situation such as this. They are missing the point that they are taxpayers and it is the taxpayers' dollar that is supporting people in difficulty who are not receiving their payments on time. Imagine yourselves if part of your income was stalled and when you inquired the attitude was, "Well, you're one of 80,000 employees on our payroll and mostly you're paid on time, so what's the big deal?" How would you explain to your children why groceries cannot be bought, why you cannot go on the school trip, why your birthday and/or Christmas present has to be delayed, why the orthodontist is just a little bit cross because your cheque for the orthodontic treatment was not sufficient funds because the payment was late, why you cannot meet the deadline for college tuition after your child has worked hard to attain the marks to be accepted? The list goes on.

The focus of my presentation is threefold. Is the present law working? I do not believe a 25% success rate is a positive. Where can one go for help if SCOE is not effective? Gosh, I have not found the help I needed to make it effective since it has been established. How should it be changed? Bill 17 is a positive start.

However, please look closely so that loopholes can be closed and that the law can be enforced quickly, simply and effectively so that child support payments are received. Please make sure there is adequate training of SCOE employees so that the job is done correctly and that their mission statement is effective. In the newspaper I read that Paul Slan pointed out some of the loopholes in

this law. Please do not make it so wordy that those payers that are excellent at finding the loopholes, do find them.

**The Chair:** Thank you very much Mrs Forbes. Mrs Murdock? Ms. Murdock, excuse me.

**Ms S. Murdock:** I am just wondering, because it was mentioned before on another day with one of the other presenters, about having this Bill 17 reviewed after a period of time just to see if it was working. What would your thoughts on that be?

**Mrs Forbes:** I think that is an absolute in that it is like moving into a new home or any new situation. Until you get it working, you do not know what some of the pitfalls are going to be until they happen. I think there should be a time frame for review, so that we are not in the same situation where we have it mushroom out of control and then this many years later we are trying to fix it.

If there was a constant review and if there was a court of appeal or somewhere you could go to say: "This is my problem. Please look closely at it"—there is too much of a silent majority out there that tends to think, "Life is simply so busy that I cannot take the time off work to go to SCOE or to get another lawyer or to come here and speak with you today." So there are a lot of people out there in the same boat who would be grateful for that review.

**Ms S. Murdock:** In listening to what you were saying, I was thinking that in my previous work I listened so often to the SCOE complaints so I know exactly where you are coming from. Actually I am very pleased with this bill. I appreciate your opinion and thank you for coming.

**Mrs Forbes:** You are welcome.

**The Chair:** With the indulgence of the committee, as we are running in good time, perhaps Mr Wessenger could also ask a question and of course the same indulgence for the other.

**Mr Wessenger:** Mrs Forbes, thank you for your presentation. I would just like to know, is yours one of these situations where you have found it difficult to collect from a payer? Is he regularly employed?

**Mrs Forbes:** My former spouse is a vice-principal of a high school in Oshawa and has 25 years' seniority. He has to drive by the SCOE office four times a day. He lives within two miles of the SCOE office. What can I say? The board of education pays him the last Thursday of every month. He gets his summer salary the third week of June. My most difficult months, interestingly enough, are July and August, the children's birthday months, and December. It seems to be a way to control and punish for whatever deemed crime, except that the children are the ones who are at the receiving end of it.

**Mr Wessenger:** So having an automatic deduction order would assist you greatly in your situation?

**Mrs Forbes:** It certainly would. We had a recent cable interview regarding this issue. My question would be, how would that work for an employee who gets paid in June for July and August, because the cheque comes in advance for those two months, and how would that deduction work?

**Mr Wessenger:** That is a good point to raise.

**Mrs Forbes:** That affects many thousands of people in the same boat who get paid in the spring or in June for the summer months.

**Mr Wessenger:** I am just getting some advice from staff. Unfortunately, the way it is presently structured, it probably would be collected as arrears when the paycheque came in on 1 September.

**Mrs Forbes:** If it was set up so that it was a payroll deduction, then there would have to be some glitch in there that would avoid taking it out in advance. Even though the salary was payable in advance, it does not seem to me that would work. As for collecting it for July and August in September, there has to be a better setup with that, because you cannot tell children, "Wait till September and then you can pay what you needed to pay for college tuition in July." That would not be effective.

**Mr Wessenger:** The court has the power to make a deduction payment order and it might be within the jurisdiction—or it would be something to be looked at, to see if it is within the jurisdiction—of the judge to make that order.

**Mrs Forbes:** Please let me also ask this question: If this keeps going back to the court, it is extremely costly for the custodial parent. Like the lady who spoke before me, it cost a fortune to try to get the rights established, moneys that I had to borrow from family. Do not put me through that indignity of having to do that again to enforce something that is already in place. To then say "Go back to the court to get this carried out" is easy to say, but difficult to do. The process is long, slow and involved and extremely costly. You are then taking more money out of the children's mouths if you do that.

**Mr Wessenger:** Perhaps I might let Ms Feldman give an answer here.

**Ms Feldman:** Your situation is really appreciated, and it is a very difficult one. Unfortunately, when the order calls for the monthly payment to be made each month, then there is not much that can be done to collect in advance until there are arrears, until that debt has become due. It would be something that perhaps the lawyers and people at large might be educated in, that if a payer has paid in a certain way that is known in advance, then the court order should be structured to allow for those advance payments.

**Mrs Forbes:** That does not help people who are already in my situation with a court order, and there are thousands, so we still have one huge problem here. I understand the arrears. I totally agree with that. But you are still forcing people like myself back into the courts; costly, takes time. By the time I got to court it would be September and the arrears would start to have—they still have to survive July and August. In years ago, when I then needed help in caring for the children for the summer months, how would I ever have paid for it if I had to wait till September? You cannot go to a summer camp and say: "Gosh, I will send it to you in September. Just take them for July and August." It will not fly.

**Ms Feldman:** It is a very difficult situation.



**Mrs Forbes:** Yes. There are still thousands of children out there who would be penalized by that.

**Mr Elston:** Just one quick question to staff: Is it still appropriate if, for instance, you find in this particular situation that a garnishment can still be used under the support order?

**Ms Feldman:** Depending on how SCOE thought it most practical, a default hearing would probably be the more practical resort as far as an enforcement mechanism is concerned, knowing that a person got paid in June for the advanced month if that person was not paying. But again, the arrears have to accrue.

**Mr Elston:** But knowing how things slow down in July and August in the courts and how much of a backlog there is, it is not effective to deal with Mrs Forbes's particular situation because the collection will still be done down the road.

**Ms Feldman:** That is very possible.

**Mr Elston:** It is in fact probable. It is just not going to be practically possible if the default occurs for July to have anything scheduled for her to get money or for someone in her position to receive money in a timely fashion. Perhaps we should try and figure out how we can manage it just a bit better.

1040

I would also be concerned, by the way, if this procedure were set up so that the order said a payment was made in June for July and August as well as June, for instance, that SCOE would withhold the money until the payments were due in July and August. If the payment was collected in June, it probably should go out all at that one time to the person, but as it is now, if you get overpaid for a monthly payment under SCOE, SCOE keeps the excess and sends it out later on. I think that would be quite unfair as well in the sense that the payment, if it was made during the marriage, would be available fully for the children and the spouses equally, but under the current administrative setup, you would sort of just dribble it out in July and August, which would be a break from the way it would have been intended to have been made available.

**Mr Wessinger:** If it is all right, Mr Chairman, the staff would like to respond.

**Ms Feldman:** Once again, the enforcement program can only enforce the court orders as they stand, and we recognize that many court orders just do not confer the best payment methods for certain payees like Mrs Forbes. But we cannot advance money that is not yet due; we are mandated only to enforce the court order that we receive that is existing and valid.

**Mr Carr:** I think your situation is one that everyone would agree there needs to be some type of system to get the money out. There are other situations, and they are more fortunate, where people can agree and the payments are made. In light of the fact that there are so many problems relating to getting through, the one in 80,000, I was just wondering if you would like to see those ones where some agreement can be made to stay out of the system,

remain out of the system so people like yourself can get better service. Would you agree with that?

**Mrs Forbes:** I think that would be great if that could work. People's temperaments change, their lifestyles change, and for whatever reason, bitterness may occur. If that was allowed to happen, that people could agree and stay out, and I think they should have that choice, there should be something there that helps them should it turn invalid so they do not have to once again have a lawyer and go back to court. There should be some message built in the law that states that within a time frame if that is not viable this therefore takes over so that the person is protected.

**Mr Carr:** I think if this system comes in place and people know that if they do not do it willingly, I think the Attorney General said that people know very clearly that there will be something in place that they will be able to get the money, then it might encourage more people to do it voluntarily, which would be great because then we will not have the telephone lines backed up.

**Mrs Forbes:** That would have to have very strong teeth, because currently the law states that there are effective measures but in fact they are ineffective. So whatever teeth are put in the bill to make sure that if you do not pay this is what is going to happen, then that has to be loud, strong and come on hard because otherwise it is one more pitfall.

**Mr Carr:** The Attorney General has talked about a campaign—I think when he was here on Monday—similar to the drinking and driving, where people would know. But just to sum up, you would be in favour, then, that the people who are willing to pay and can come to some arrangement, you would rather keep them out of the system if at all possible.

**Mrs Forbes:** It would reduce the numbers and perhaps make it a speedier effort on behalf of the staff who are implementing it.

**Mr Carr:** For the people who really need the concentrated effort like yourself.

**The Chair:** Thank you very much, Mrs Forbes. Very obviously, whatever improvements we can effect in the legislation, you are reminding us that children cannot be fed retroactively.

#### LONDON STATUS OF WOMEN ACTION GROUP

**The Chair:** We now have a presentation from Margaret Buist of the London Status of Women Action Group. Mrs Buist.

**Ms Buist:** It is Ms.

**Ms S. Murdock:** You will learn yet.

**The Chair:** I always want to give the benefit of the doubt. We have half an hour, Ms Buist. Typically, it is divided in half between your presentation and questions from the various caucus members. Proceed when you feel comfortable.

**Ms Buist:** I do not have a written brief for you, because I know what happens: I hand those out and you look

at them and do not listen to me. So first let me tell you about my organization.

**Mr Elston:** Sometimes it helps to have it twice.

**Ms Buist:** I can always provide you with one after you have listened.

I am here representing the London Status of Women Action Group, which is an organization of men and women in London, and we also represent people from southwestern Ontario committed to improving the status of women. I myself am a lawyer. I run my own law firm in London and one of my specialties is in family law, which was why I was asked to come and present this presentation to you with respect to this bill.

Let me start with the basis on which I am presenting to you today. It is our position that the majority of people who are owed support in this province are women and children, and the majority of these creditors are not being paid. I am not telling you or anyone else anything we do not already know.

I would like to congratulate the new government on its efforts to introduce this bill and to address a very major social, economic and legal issue in our province, and that is, of course, the enforcement of support orders. The province has introduced this bill, which I think is needed, but it needs some strengthening in certain areas and that is why I am here to speak to you today.

More than strengthening this bill, though, we need a major commitment on behalf of this government and also the entire population of the province to shift our attitudes towards support. We need to redress economic imbalance between men and women in our province. The fact is that more men have more money than most women. This law tries to redress this particular imbalance, and it is only one portion of it: We already have under the Family Law Act and also the previous support act very well set out that there is an obligation to pay for children and for spouses who are in need of support. As you know, that is based on a needs and means test. That is quite clearly set out and has been since well before the new Family Law Act of 1986, that we have a needs and means test for support.

But let's not forget that we are here to talk about Bill 17, which is enforcement of support. We are not talking about the fact that women and children need support. That has already been addressed in the Family Law Act. What we are here to discuss today is the enforcement of support. How much women and children need and how much men can afford to pay is already decided by the time we get to Bill 17 in the legal process. The courts have already decided what the amount of support should be. What we are dealing with here is how that will be enforced.

What we are talking about is no different than someone not paying on his MasterCard, not paying the bank or not paying on his car loan. This is a debt. The only difference, and it is an extremely significant difference, is that we are talking about supported individuals for basic needs such as food and shelter. But we need, in this province, to grasp that it is just as important as a debt owed to a bank or to MasterCard or the car loan. And believe me, those debts are strongly enforced by our courts.

Given that framework, let's look at Bill 17. But briefly, before I do, I have one other point to make. On Monday the Attorney General agreed that these hearings were open to discuss access enforcement issues as well, as I understand it. In our organization—and I myself was very disappointed by this quick change in focus—these are two entirely separate issues, and I urge you not to relate them and/or confuse these two issues. Support enforcement is not the same as access enforcement. I speak as a lawyer when I tell you that the law is very clear on this fact. We have been trained as lawyers to recognize from the very first day of our family law classes that support is different from access. Access is determined in the best interests of children and includes such issues as their physical safety or their emotional wellbeing. Support is based on financial need; it is a financial question.

You have heard some people before you at this committee, and I am sure that one or two of the men who will follow me this morning and this afternoon will tell you their hard-luck stories of how they pay and pay support and never see their children. There are many reasons fathers do not see children. They may be violent men, they may mistreat their children. But these are not related to support issues. They are separate issues from whether these men should pay for food and clothing and homes for their children.

1050

Let me put their arguments in perspective and, hopefully, to rest. They argue, "If I pay for my children, I should get to see them." By this logic, we should ask ourselves: If they do not pay for their children, should they not get to see them? Well, no one would agree with my second point. I will no longer sidetrack on the issue of access, but I would ask this committee to do the same. This is not access enforcement. We are discussing support enforcement in these committee hearings. Now to Bill 17.

The women I represent approve of several areas of these bills, and I will briefly run through them for you. First of all, we definitely approve of the concept of direct deductions from pay. This is one excellent additional way to enforce support. It is limited in its scope to those men who are employees in steady jobs with co-operative employers, I would argue; but essentially it is a good idea.

Second, from my perspective as a lawyer, I would commend the government for adding sections regarding the use of writs of seizure and sale. All of us who are practising in this area recognize that at a certain point in its enforcement techniques SCOEA is limited in what it can do, and that adding the sections using the writs of seizure and sale is a very important addition to this act. Also, the explicit addition of powers for motions of contempt and orders of contempt in the Ontario Court (Provincial Division) are important, as those of us who practise law recognize. This has really only been through common law, not necessarily statute, and that is an important addition as well.

Let me discuss briefly with you the areas of improvement that we see necessary for Bill 17 prior to its passing in the Legislature. First of all, with respect to the name, I might suggest to the committee that the name is confusing.



We already have the Child and Family Services Act, which deals with child protection matters. To call this the Child and—I have forgotten the name; Child and Family whatever it is. You know what it is. Whatever it is, Child and Family something, is confusing.

I would also like to point out that the word “spouse” is not in there. As we all know, most support orders are for children but many, many support orders are for spouses, and those are paid less frequently than for children. I have heard that in the government’s educational campaign it is going to appeal to the general public with respect particularly to supporting children, but I would also say that we must not ignore spouses who have been awarded support by the courts. My suggestion would be to consider including the word “spouse” in the act and call it “child and spouse” enforcement, if necessary. The fact that spouses are not in there causes me some concern, because there is a tendency, on the part of the judiciary and the part of the legal community and the part of payers, to ignore the fact that many women are owed support by their husbands.

Second, and probably most important, I think the weak link in this act is the sections that deal with giving notice, both by the debtor and by the employer or income source, I believe it is called. Subsection 3c(15) provides that within 10 days of an interruption in payments, an income source and a debtor must give notice to the director, and subsection 3c(16) says there must be 10 days’ notice when payments are resumed. This relies a great deal on the co-operation, not just of income sources but particularly of debtors. And we all know by the staggering statistics that debtors are not particularly co-operative when it comes to paying their support.

I would suggest to you that there needs to be a much stronger enforcement mechanism than currently exists in the act when this notice is not given. Sections 12a and 12b provide some remedies through motions for contempt or basically what would amount to a provincial offence. However, and I am sure that those of us who have tried to enforce restraining orders can tell you, first of all, getting one of these offences laid is virtually impossible and the delay in bringing motions for contempt or provincial offences for the enforcement of giving notice can take up to six months.

Anyone willing to shift jobs frequently could easily frustrate the purpose of this act, even though they are employees. And employers who are not willing to co-operate can still easily, I would argue, frustrate the purpose of the act. I would also point out to you that in practice, in my experience and those of my colleagues, we are still facing a great reluctance on the part of judges to enforce support orders, and to order fines or imprisonment for recalcitrant debtors is extremely difficult. The judges are not willing to do that in many, many cases. If those are the only remedies for not giving notice and judges are unwilling to use those remedies now, I think that creates a great weak link in the act for people who are willing to shift jobs and collaborate with their employers not to give notice, for example, when their income starts up again.

Also, I would point out that the sections with respect to notifying of address changes—again, that section, I would

submit, is almost farcical. These men do not even show up for court, far less notify you of their address changes.

My other concern is with the consent to remove yourself from the provisions of the act by posting security. I understand that the government is considering a four-month period of support as sufficient security, because that is essentially what would be the time-lag in SCOE enforcing a breach of these orders. I would argue that is extremely optimistic, to think you can enforce these in four months, when I know from my clients that the current waiting is well over a year. The backlog is not going to change immediately, it is not going to reduce immediately and four months’ support as security is simply not sufficient. A year or two years perhaps, to post security if you want to opt out, would be a minimum. And I ask you to think again: Would MasterCard accept such an arrangement? Would the Bank of Commerce accept such an arrangement? I would submit that they would not.

My other concern, and I would like to address this directly to the staff of the Attorney General, is that currently with respect to support orders we must put the address of the creditor on those orders and/or as lawyers put our own addresses and therefore be involved in the process. I do not see any change in that in Bill 17, and I would bring to your attention that for women who do not want their spouses to know their address, who are in fear of violence from their former spouses, this is a problem. Women need other options than putting their address on the order, and I would urge the Attorney General’s department to consult with women’s groups, particularly those dealing with issues of violence against women, to find other alternatives.

I would also urge that in addition to Bill 17 the government must take a proactive educational approach. A campaign similar to drinking and driving towards the general public is warranted. I would ask that the government consider adding not just focusing on child but also spousal support. I would also ask the government to seriously consider a strong educational program for the judiciary on support enforcement. The judges, in my experience and that of many of my colleagues, are very reluctant to use the remedies already existing, and I assure you they will be reluctant to use any new ones as well, unless they are educated on the importance of redressing the economic imbalances in our society, one of which is caused by the huge amount of support which is not paid by men to women and their children.

1100

**The Chair:** Thank you very much for that excellent brief.

**Mr Kwinter:** Ms Buist, if I can just pursue something, and I want to qualify what I am going to do. I am not particularly advocating what I am going to say; I am really acting as the devil’s advocate. I am just curious to get your reaction. You stated that one of the problems is that there is not a recognition that a debt in a support order is no different from a debt on a credit card, a bank or a mortgage. Is that correct? I mean, is that what you feel?

**Ms Buist:** In terms of the fact that it is a debt owed to someone, I agree with that. However, it is more important than a debt owed to MasterCard, in my submission, because it deals with the livelihood of individuals, as opposed to the support of a business or a corporation. It deals with putting a roof over women's and children's heads and food in their mouths.

**Mr Kwinter:** The point that I am trying to determine is, if this debt is not in arrears, in the same way that if you have a MasterCard or if you have a bank debt or if you have a mortgage and you are paying it on a regular basis and you do not have a problem, why would you want this particular debt put in the hands of the employer so that he pays it and not say all debts? If you have a MasterCard account, if you have a bank loan, if you have a mortgage, the employer shall deduct all of these at source so that no one will have any problems any more collecting anything.

**Ms Buist:** I think it is a question for where our society sets our priorities, and our priority, in my submission, should be in making sure that women and children are supported by those who have already been ordered to support them. We have clear evidence that men are not fulfilling those obligations. The statistics are staggering and therefore I think we need to make a statement to our society. We need to educate our society and this is a very effective means of doing that, to make a statement that this is an important debt which must be paid first and foremost. It is as important to us as your provincial tax, which is often deducted at source.

**Mr Kwinter:** Okay. If I can just pursue it, though, the point I am trying to make is that I acknowledge its importance. But what happens if it is being paid, it is being paid on a regular basis, there is no problem with it? In the same way that there is recourse if you do not pay your MasterCard, you can get a garnishee and you can do whatever you have to do and this could have priority over any other debt. But why single out this particular payment as being mandatory, that regardless of whether you are paying it on time, whether you have never been in arrears, it must be deducted by your employer?

**Ms Buist:** Again, the statistics speak for themselves as to the necessity and, second, the act also provides a provision for someone who is responsible, one of that 15% who is responsible, to, with the trust of his spouse, consent to the removal upon the posting of a security. So there is provision not to have this mechanism take place.

**Mr Kwinter:** It is my understanding that the provision is only there if you prepay at least four months' payments. Is that correct?

**Ms Buist:** Yes.

**Mr Kwinter:** So what it really does is that even though you may have the money to pay on a regular basis, you may not have the money to prepay four months, and you would still be penalized.

**Ms Buist:** I guess those tiny minority of men who are responsible have to pay for those who are not.

**Mr Kwinter:** Again, I am just speaking hypothetically, but I really do not accept the fact that there is a tiny

minority of men who are responsible. I just do not accept that. I think it is a generalization.

**Ms Buist:** I am sure the Attorney General could give you the current statistics.

**Mr Carr:** No, he cannot.

**Ms Buist:** Relatively current statistics, then, on the default in support.

**Mr Wessenger:** I understand that we have given the statistic. It was 20% of orders currently are being paid in full.

**Mr Carr:** You cannot tell us why they are in arrears. You cannot tell us why and we had Dofasco—

**Mr Wessenger:** We know how many.

**Ms Buist:** Why is it relevant why they are in arrears? The reason for arrears is irrelevant. The fact is that they are not paying. If they want to take steps to deal with the reasons for arrears, that system has been in place in our legal system for decades.

**The Vice-Chair:** Mr Elston, if you will keep it brief, please.

**Mr Elston:** Our witness had indicated that fines and imprisonment have not been used. I know that to be the case as well, very often. What would an alternative be? Have you got a suggestion for us?

**Ms Buist:** I think imprisonment is very effective. It is just that the judges will not use it.

**Mr Elston:** Except the jails are busy and that means that people lose jobs and things like that. How does that help the children and the spouse? We got into this yesterday a wee bit in discussing other things. If you are looking at helping children and spouses who are not being supported, prison and fines going to the province do not seem to me to be a great alternative. Why should the crown get paid and the children not?

**Ms Buist:** Again, I am sure the Attorney General could speak to this better than I could, but in my experience, the day before or usually the day after these guys go into jail, the money appears. It is an extremely effective means of having these people pay.

**Mr Elston:** And often times you will find that these people will be apt to be asked to change employment as well. If they turn out to be resident at the local jail for a time, people cannot count on them, right? It is a difficult question. It is not as easy as just instructing judges to do certain things like throwing people in jail, because they recognize there is a question of—well, we ask them to pay money to the crown instead of to their spouses who need the money. Then that is taking food out of people's mouths just as effectively as not paying at all. Or if they throw them in jail, they are not earning the dollars, and that likewise is causing problems. I am looking for some alternative to that which would be more effective.

**Ms Buist:** One of the other alternatives that I see Bill 17 has addressed is the strengthening of the provisions with respect to writs of seizure and sale, and that is important. If there is a piece of property available, that can be



seized and sold and the proceeds from that sale can be applied towards the arrears.

**Mr Elston:** It can be now as well.

**Ms Buist:** It does not happen, though.

**Mr Elston:** Okay, but it can be done. You would be able to do that for your client, right?

**Ms Buist:** Oh, sure, I could do that for my client. Yes.

**Mr Elston:** Just to follow up, because you are a practitioner in the area, what does it cost now for an application by you for enforcement of a payment order, roughly?

**Ms Buist:** To do a writ of seizure and sale, you mean?

**Mr Elston:** Yes, or even just to bring in for a default hearing.

**Ms Buist:** To do a variation of support and a default hearing and all that kind of thing?

**Mr Elston:** Let's say you just come in to do the default hearing. What would that cost? Because that is the other problem. In the system currently now, people pay a lot of money and often do not get the results. That is why we are here and that is why all three parties are supporting a technique to get away from it. Because one of the problems obviously becomes that as soon as money goes either to the legal system or to the crown for fines or somebody is thrown in jail, we have not addressed the issue which is paramount in your presentation, which is getting dollars to feed and clothe women and children. So the issue is, you know, what does it cost now if there is an application by your client through you to the court? What would you charge?

**Ms Buist:** First of all, I do not do that many default hearings, because I do not usually represent people who do not pay their support.

**Mr Elston:** Hypothetically, if you did some, what would you charge? What is the going rate in London? You are in the bar there and you must have an idea.

**Ms Buist:** It is based on an hourly rate, but a rough estimate would be probably, to do a variation and a default hearing, around \$1,000.

**Mr Elston:** Okay. So \$1,000 would be then taken up with legal fees and again unavailable.

**Ms Buist:** But do not forget, Mr Elston, that these men have been ordered or have agreed to pay a specific amount of support. They now change their minds or they have a change in circumstances and they want to vary it and they want to get out of their obligation. I mean, there is a cost to that always.

**Mr Elston:** Listen, I agree with you. My concern is not that we, because it is going to be costly, somehow soothe their breach. That is not the point. The point is, though, that if a spouse who was not receiving payments asked for you to represent her on a default hearing or to appear in answer to a variation application, likewise she would be probably subject to a payment to you of \$1,000 or whatever, and if the point of this is to remove that cost, then we should move fairly quickly to do it.

The other side of it is, if you could tell me what would be an alternative to fines and jails, which likewise are

drains on the resources available to what used to be a family unit, I would be happy. We did talk about this yesterday with the Attorney General's assistants and there did not appear to be one that was likely to come forward.

1110

**Ms Buist:** I can only repeat myself in saying that I think the threat of jail is the most effective way to secure the payment of arrears.

**Mr Elston:** You have just told us, though, that there is no threat to a number of individuals who kind of, what do we say, go to the threshold time and again.

**Ms Buist:** Right.

**Mr Elston:** If people are understood not to be going to issue orders on contempt, then it is not effective either, and that is one of the things we got into, talking about the \$10,000 or \$4,000 fine issue.

**Ms Buist:** Yes.

**Mr Elston:** Can you suggest to me—this is my last question—

**The Vice-Chair:** Thank you very much, Mr Elston.

**Mr Elston:** Can you suggest to me some way of dealing with the issue of reluctant employers? That was another area that you saw as a possible concern. Is there something that can be done there, in your view, that would prevent them from being reluctant? I just want to bring to your attention that the chamber of commerce and a couple of other organizations that represent employers are in support of this, by the way.

**Ms Buist:** First of all, education is the most important and effective way and, second, heavy fines through a very quick process.

**Mr Sorbara:** Can I just ask a supplementary? It will just be one supplementary. I was wondering if the witness is really in favour of reinstituting debtors' prisons in the province. I am surprised to hear that, frankly. Is that your view?

**Ms Buist:** We have them already. They just are not used effectively.

**The Vice-Chair:** There are an awful lot of questions that all members would like to ask. Can I please have an agreement here that we extend the time by 5 or 10 minutes?

**Mr Sorbara:** Agreed.

**Mrs Cunningham:** I always remind my colleagues on this committee that I am very fortunate to live in London. I get some good advice all of the time. Again, another source of good advice for many of our issues is from yourself, Margaret, and we appreciate it. I think you are going to be asked a lot of questions today because they see you as a person who can probably help us out a lot on meeting the needs of everybody. We have some concerns that philosophically would not agree with your views or mine, but they have been raised at the committee and we are looking for a constructive way of improving this legislation. It is rather refreshing to have these kinds of interchanges between the parties on this, so that is what we are looking for. I appreciated the line of questioning by Mr Elston.

We have had a couple of concerns. One is with regard to the fact that most of us would rather be talking about constructive programs than spending our money in the courts. I do not even like this bill for the reason that I do not see it doing a lot to the kind of people you deal with, but it will do something. I would rather be spending my money on supervised access and support services for families.

The idea of some father or mother being in jail just upsets me, because I do not think it is constructive to the long-term quality of family life at all. In my work at Merrymount Children's Centre, for some nine years I was involved in supervised access and it was great. We took care of all this stuff and we would phone the local lawyers and say: "Guess what. We're going to save you a whole lot of hours of work." Most of them were most appreciative. So that is where I am coming from.

I have two problems. Mr Elston was pursuing one of them. The penalty, I do not have a clear view as to—you have given us some suggestions, and we will look at that. The other one is the whole idea of the person who has a good track record, and there are a few of them in my view. But some of them are playing, I think, an important role in their families and in their communities. There is a certain section of our community right now in London that has written me letters. I have probably over 50 letters from people who I represent and they just use the excuse and their great concern that this is one more reason not to do business in Ontario.

Now, that may sound shocking to you and me, but some of those people are in my office. They are talking about the tremendous taxes they pay, the intervention in their private lives. They talk to me about what they are doing with their families now. Their greatest concern in the last 10 years has been the fact that even when they want to give their families more money, they still have to go to court to do that. We had an example of it here yesterday, the young man who was out of a job for three years when he first became separated; it was easier for him not to work. He is finally working and paying up, and just last week was told that he could not give his wife \$15 a week more for music lessons without going to court and it would cost him \$1,000—the example that you just used.

Do you think there is room for some discretion in the regulations, anything that could save people from having to go to lawyers or having to spend more money in the courts? Is there anything that we could try on an interim basis? I think we should be putting some kind of sunset or review in this legislation after a year or two to see how it is working. That would help us solve the problems of that percentage of our community in London whom I represent. I cannot just come with my own personal views, which are somewhat tainted because I have worked in the same field you have worked at.

**Ms Buist:** I am not sure I am clear on your question. You wanted to know, I believe, from me what cost-saving measures could be put in place for those debtors who are responsible and pay.

**Mrs Cunningham:** These are not even debtors. These are people right now who pay and would like, some of them—I mean, far be it from you and me to even recognize this, but they came before the committee and they had their pieces of paper yesterday and said: "We have to pay a lawyer \$1,000 to get a variation in our support. Some of us have been supporting our families for seven and eight years, some of us have been supporting them for 15, and every time we want to change something we have to spend money if we stay within the law." We are now saying to those same people, "Not only do you have to do that, but you now have to go to the director and make sure that he knows about even an informal separation agreement, and he is now responsible for, in some way, making certain that you pay up." So it means in most instances, except where two people agree, and I do not know how that is going to work yet, they will have to go to their employer. The employer would be informed by SCOE that this person must in fact have these payroll deductions, for want of a better word.

Can the director of SCOE, either by the regulations or legislation say, "Look, we've got a number of people in these communities, that in fact it's working for them now"? Is there some discretionary power we can give the director so they do not have to spend one penny on any legal action at all and give it to their family members? In your experience in other law or what you do in your daily life, are there any regulations that are a precedent for that kind of thing, saving people money where things are working? I am talking about where things are working.

**Ms Buist:** First of all, as I mentioned before, as I understand it, the people for whom things are working are a very small minority.

**Mrs Cunningham:** But they are there.

**Ms Buist:** They are there.

**Mrs Cunningham:** And we want more of them.

**Ms Buist:** Certainly. But they are a very small minority. I think when we look at the entire situation, direct deductions from pay could be a significant cost-saving approach for this province and also, therefore, for individuals through their taxes. All of us pay a significant amount of provincial taxes which go to welfare, social assistance, to support the women and children who are not being supported by their husbands and fathers.

**Mrs Cunningham:** But you really have not answered my question, because I agree with you in many instances that the direct deduction from payroll will be cost saving. But I am talking, where the government is not involved in any way or the employer is not involved in any way right now, they will be as a result of this legislation. For even 10% of the fathers who are out there—I do not know what the number is—have you got a suggestion for the committee? That is basically one of our great struggles right now.

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**Ms Buist:** I think the act itself provides a mechanism to deal with those particular individuals, and that is in the section that deals with consenting to opt out, clause 3d(3)(b), where it says that the "parties to the support



order have agreed that they do not want support payments collected through a support deduction order," and then also a very important proviso that security be posted.

You can go to the court. You do not need a lawyer in Ontario Court (Provincial Division). It is designed to be relatively simple, and some people do represent themselves—it is possible. You can make an agreement with your spouse that you do not want a support deduction order and, therefore, you do not have to be involved in the process. That would deal with that tiny minority who have a basis of trust in their relationship and who are responsible and pay. Yes, they have to post security, but I think that is also an important aspect of bolstering the trust between the parties.

**Mrs Cunningham:** But you were also suggesting that the security be a year or two years.

**Ms Buist:** Yes.

**Mrs Cunningham:** So the kind of people I deal with in my office, between them they would be lucky to be earning \$25,000 a year. I am talking about men and women working together. How would that person even post a security? The three or four people I saw last Friday in my office to talk to this legislation—because I got a group together who think it is a good legislation—could not, even if things were working better in their family, post a security; and that was their complaint about not having, after a track record of a couple of years, the opportunity just to deal with it in their own separation agreements and having no government involvement.

**Ms Buist:** Yes, and I would reiterate the point I made before, which is that sometimes this small minority has to pay for the irresponsibility of the majority. It may be inconvenient for them, it may be a little bit more costly for them, but I think we have to recognize that a huge number of support orders are not respected and are not followed and that many, many people are in contempt of these orders. The small minority has to pay as a result of that. I think it is very dangerous in legislation like this to provide lawyers and judges in particular with an option to opt out of the system. I can assure you that under the current system, where you have the option of withdrawing your original support order, there are many, many women who are coerced to do that.

**Mrs Cunningham:** I know about that. I was not suggesting lawyers and judges. I was suggesting, in this case, the director of SCOE, because it does happen with regional and area directors in the offices of the Ministry of Community and Social Services that there is a lot of director discretion based on different issues, for instance, child care, the needs of the disabled. There is a lot of director discretion in legislation. I thought this might have been an opportunity to try it again, but I do appreciate your frank answers and your excellent presentation today.

**The Vice-Chair:** Thank you, Mrs Cunningham. Mr Carr, in the interest of time, I will move to the NDP and if there is any time left, I will come back to you. Mr Mills.

**Mr Sorbara:** Why do we not just dispense with the NDP?

**Mr Mills:** You cannot do that. I am very pleased to be here today to listen to your presentation. I thought the whole nub of what you are trying to say is that we do need a shift in attitudes to make this whole thing work. Surely everybody agrees that is needed. I am going to be quite brief, because Mrs Cunningham said a lot of things that I had on my mind and I am grateful for her succinctness in that, because I tend to ramble on.

However, one of the things I have wrestled with and a lot of other people have wrestled with is the loopholes in this bill. I foresee some problem with the person who keeps changing jobs and changes his address. You have spoken about the reluctant employer, but this issue about people who keep jumping around still remains a problem with me. I just wonder whether with your expertise you see some positive way that we could close that loophole or do something to improve that.

**Ms Buist:** First of all, I think education is an important tool in this process. I started off the presentation talking about how we have to change our society's attitudes towards the economic imbalances which exist, of which this is a part. This is an important part of that economic imbalance, so I think education is vital.

Do not forget too that Bill 17 is only one of the ways to enforce support orders. There are still existing numerous ways to enforce support orders. Default hearings would still go on, for example, for those who are not employees or for those employees who constantly shift about and are not able to be caught within Bill 17.

I would reiterate that jail is an important final—and I stress final—threat which does carry some weight. It is certainly wielding a big stick, but for many people that is what is needed.

**Mr Mills:** So some sort of amendment to go in—

**Ms Buist:** That exists now, but judges are reluctant to do that, understandably so. I understand Mr Sorbara's point about a debtors' prison, but until those attitudes in our society begin to change, a big stick is needed.

**Mr Fletcher:** I just have two things. One is getting back to serving sentences and jail terms. The courts now are allowing people to serve their sentences on weekends so that there would not be a real loss of employment if that were the case.

**Ms Buist:** Yes, that is a good point.

**Mr Fletcher:** Something else—you obviously read the amendment. If I were to want my child to have music lessons, there is nothing in the act that says I cannot just pay the music teacher. I do not have to go through the spouse, do I?

**Ms Buist:** You mean a debtor making additional payments on top of court-ordered spouse—a payer, yes.

**Mr Fletcher:** Right. Let's say instead of going through the family, I—

**Ms Buist:** No, there is absolutely nothing stopping a payer from giving Christmas or birthday presents, making additional payments, buying running shoes when they are needed, and I am sure many women and children would greatly appreciate that.

**Mr Fletcher:** I would not have to go through the courts for that.

**Ms Buist:** Absolutely not. If you wanted it included in your support, if you wanted to pay more support—and let me say there are not many people like that; we are talking about a teeny, teeny, tiny minority of men who want to pay more support than they are ordered to by the court—if there are some of those generous souls and they want an income tax credit for that, which is really the reason you would want it written down, you would want that included as a deduction in your income tax, then by agreement with your spouse, and again in Ontario Court (Provincial Division), not necessarily with representation, you can amend the previous order. You can vary the original support order by agreement.

**Mr Wessenger:** I have just got three short questions. First of all, I gather you do only a family law practice. Is that true?

**Ms Buist:** No, that is one of my specialties.

**Mr Wessenger:** Is that a major specialty?

**Ms Buist:** Yes.

**Mr Wessenger:** In your experience in that practice, in fact can most payers pay their support? Do they have that ability?

**Ms Buist:** That is a determination made by the court and/or by agreement of themselves at the time of the making of that original support order. That is done by a very strict needs and means test with full financial disclosure. So they either agree to it or a judge in his or her wisdom decides they can afford to pay.

**Mr Wessenger:** I know they have the ability at the time of the order, but I am just raising the question, when there is default, what is your experience in that regard?

**Ms Buist:** There are hundreds of reasons why men default in their support payments.

**Mr Wessenger:** Would you say that ability to pay is prevalent in many of the cases of default or most of the cases of default?

**Ms Buist:** They would say ability to pay.

**Mr Wessenger:** What about your experience?

**Ms Buist:** There are hundreds of reasons. They get involved with someone else who has children. They do not respect the system. They do not feel they have an obligation. Their spouse gets involved with someone else and they feel that person should be paying, not them. There are many, many reasons. I cannot give you one specific reason.

**Mr Wessenger:** Do you think this legislation will make payers take their obligations more seriously?

**Ms Buist:** If it is combined with a serious educational program, I think so, yes. It has that potential.

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**Mr Wessenger:** Should what is now SCOE and is to be the child and family support branch be given authority to vary payments? I do not mean legal authority to vary payments, but given the discretion to allow either less payments or more payments. Do you think that discretion should be given to SCOE?

**Ms Buist:** No.

**Mr Wessenger:** Would you explain why?

**Ms Buist:** Because SCOE is essentially designed to be a collection agency. It is not designed to be a judge.

**Mr Wessenger:** Fine, thank you.

**Mr Carr:** We have a little bit of time. I just have a quick question going back to the amounts. We talked about them yesterday with Ms Vickers from Dofasco. She was saying that 70% of the problems, and she is a payroll person, is because they cannot pay. I was wondering how we could get at those people. These are the ones that try to work out the ability to pay. They are robbing Peter to pay Paul and so on. How can we get to those people and get them to pay? Have you given any thought to that?

**Ms Buist:** They themselves, if they cannot pay, have an obligation to go back and vary that original support order to show that they no longer have the ability to pay the same amount. Again, a full hearing is done with full financial disclosure so that it can be seen that they truly cannot pay the same amount.

**Mr Carr:** So we go back to the courts then.

**Ms Buist:** Yes. I think that is the only way to do it. A decision has to be made as to the credibility of these people and as to their full financial circumstances, and I think the only way to do that is through a hearing with evidence. It is the obligation of the payer to start that proceeding if he is not able to pay.

You probably also are well aware that what usually happens is there is a default that goes on for about a year before SCOE catches up because of its current backlog. A default hearing is set and the payers rush off to a lawyer and commence variation proceedings and suddenly try to show they have not had an ability to pay for the last year. Again, there is not a responsible attitude towards these debts being taken by the payers.

**Mr Carr:** That is what the lady from Dofasco was saying, that what they will do, if it comes to crunch time, is they will not make the car payments to switch over. Basically the money is being pulled. I think you are right. I think the children have to come before car payments or MasterCard charge. What we need to do is make sure they get it, but the way the system is now is some of the people are trying to move money around.

My last question is this: I was just wondering if your group has had a chance to consult with the Attorney General on this bill.

**Ms Buist:** No, in fact with respect to other women's groups that I have spoken to, we have not been consulted and we would really like to be consulted.

CAMPBELL TILLIE

**The Chair:** We would like to now hear from Cam Tillie. Mr Tillie, you have approximately 15 minutes. Divide up that time however you wish. There may be many questions from the members of the committee as well.

**Mr Tillie:** Thank you. Before I get into what I wanted to say, Mr Fletcher brought up the point about jail and being able to serve time on weekends. For custodial parents who do not pay support, that is not true. You can be a



robber, an attempted rapist, you can get out and serve your time on the weekends. A custodial parent cannot. I know; I speak from experience.

Non-custodial parents have no rights, so the obligation to pay support is a natural aversion. For instance, if the custodial parent decides to change the name of the child, the non-custodial parent can do nothing about it. The custodial parent can move and the only thing the non-custodial parent can do is follow at a cost to himself. In no way can the non-custodial parent be involved in the education of the child, other than if the custodial parent wants to let him.

Given that they have no rights in that regard, paying support becomes something more than just paying support. And, as you already spoke about, verification of the percentage of people not making support would probably prove that for the most part, most of them cannot afford to make the support payments.

The obligation of the court to prove that quite often is simply a judge sitting there making a decision that he has absolutely no idea about what he is talking. For instance, in London a judge gave me \$150,000 I did not have, to prove I should pay support. The same judge put me in jail because I could not pay it. I did not pay it the day before, as Ms Buist suggested would happen.

The judges sit there and do not have any concept of what \$25,000 to \$45,000 a year income is like split between two families. It is something I guess they have never had to live with or since they became judges they get away from. I am not saying they did not live with it. A lot of judges do many, many things as lawyers and before they become lawyers where they can live on those things. Then they go beyond it and it seems that they forget what the past was like. Lawyers themselves care about only making the most or the best deal for their clients without regard to the opposing party or the child involved.

To pay support and it puts you on the basis of being on welfare gives you no reason to want to pay support.

The other thing I would like to say is that it seems to be a men versus women problem, as brought up by Ms Buist ahead of me. I try to stick to non-custodial and custodial parent. I think it can go either way, and I do not believe it is a women's lib issue.

Judges make the decisions for support based on the personality of the persons involved, their appearances and a few minutes of time regarding them in a courtroom, which can lead to misleading statements by lawyers and thinking that money makes or breaks the child's future. They rarely see or hear the child's viewpoint, which is very important. Also, it boils down to the frame of mind the judge is in at the moment of his decision.

There are obviously many people who will not pay, but there are many, many more who will not pay because the system has robbed them. The Attorney General, through SCOE, provides a lawyer to the custodial parent to collect support payments if they are not made. So there is absolutely no cost to the custodial parent to try to collect. I do not understand where the cost is to a custodial parent when SCOE provides the lawyer free of charge, under the guise that it is for the child when in fact it is for the custodial

parent. The non-custodial parent, if he cannot afford a lawyer, must seek legal aid. Again, their ability to pay is reduced.

That is about all I have to say, other than if you want to ask any questions. I do not agree with your bill and I think it is more interference in the private lives of many, many people by just adding it to the system.

**Mr Carr:** As I said to some of the other people, I appreciate your coming in like this and dealing with your personal situation.

In your case, was it a case of your not being able to pay the judgement, the amount you were supposed to pay? The question I asked before to the person preceding you is that then you go back and show that you cannot pay. I was just wondering how you see that process. Is it that easy?

**Mr Tillie:** No, it is very difficult. I have a motion in front of the court in London now that I put in 17 January 1990 to vary the support payments. It has never been heard.

**Mr Carr:** January of last year?

**Mr Tillie:** Yes. It has still never been addressed because of the things they had come up with in between and they keep adjourning. Meanwhile, anything the custodial parent has asked for has been addressed.

**Mr Carr:** And you have paid during this time some money?

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**Mr Tillie:** I have not paid one penny. I have no intentions of paying until my problems are addressed. I make between \$250 and \$300 a week.

**Mr Carr:** Where do you work?

**Mr Tillie:** I run my own business, which is a small courier business, myself and one part-time employee. When this business started I had a staff of 30. The day the judge put me in jail was the end of my business.

**Mr Mills:** Thank you for coming here today. I realize it must be a great emotional stress for you to answer questions, but I really am interested in paragraph 8 of the submission you gave. You say, "There are obviously many people who simply will not pay, but there are many, many more who will not pay because the system has robbed them." How has it robbed them?

**Mr Tillie:** Okay, I will give you an example. My son's mother moved out of London, which now costs me money to follow her to see my son. My son is more bonded to me than his mother. I drive to the town of Ingersoll, which is 20 miles from London—in Toronto I guess that is not a big deal, but it still costs me money—28 times a month. I asked the court for her to drive twice. They refused, yet she is the one that caused the problem. I wanted my son to take French and music—not allowed. And the system backs her up. If you want fathers, or mothers for that matter, to pay support, then give them some rights, because you are only taking them away from them.

**Mr Mills:** It is just the use of the word "robbed" that I had difficulty with.

**Mr Sorbara:** I just have one question. I want to preface it with remarks arising from the previous witness, who was advocating the re-establishment of debtor prisons in Ontario. I noticed some enthusiasm for that from at least one of the NDP members, and I just think that is yet another example of the rise of right-wing politics in Canada, which is also reflected by militarism and absolute faith in the state, and I abhor it. I want to ask this witness how it was that he ended up in prison. What were the circumstances?

**Mr Mills:** On a point of order, Mr Chairman: I really do not think, in fairness to my colleague who is absent from the room, that he made any statement that he was in favour of debtors' prisons.

**Mr Sorbara:** If that is the case, I would like to hear him say that he will work as a politician to eliminate the imprisonment of debtors in this society. I would love to hear that. I will join him in that.

**Mr Mills:** You were out. I am just speaking on your behalf.

**The Chair:** Mr Sorbara is addressing you. You have the option to speak and answer the question.

**Mr Sorbara:** No, it is okay. He can answer that later. He does not have to do that now. I want to hear from the witness and his circumstances.

**Mr Tillie:** SCOE took me to court to make me pay. I told the judge I could not afford it. He looked at my financial statement and said, "You have \$150,000." I did not have it and I do not know where he got it. He also said I should not have a vehicle, which I use for my business. Also, I had a \$1,300 or \$1,400 education fund for my son. He took it. He said I did not have the right to have it. So I went to jail.

**Mr Sorbara:** How long were you in prison?

**Mr Tillie:** Just two days.

**Mr Sorbara:** I think one of the things this committee needs to do is to look at alternatives to that sort of thing, and I think that could be a very common agenda. That is part of a rather unfortunate past in not only Canada but elsewhere. I do not have any other questions.

**Mr Kwinter:** I just want to follow this up for a minute because I am trying to figure out how the process works. They sent you to jail for two days—

**Mr Tillie:** He sent me to jail, to stay in for 60 days or until I paid. A friend of mine found out I was in jail and paid it for me. I still owe that man the money.

**Mr Kwinter:** I was trying to find out how you got out. Someone paid the money for you.

**Mr Tillie:** Yes.

**The Chair:** Mr Tillie, would you like to make any closing comments?

**Mr Tillie:** Only that Ms Buist said education would help. I think giving the non-custodial parents some rights would be of a lot more help. I think in today's society men

are becoming far more involved in the children's lives, more than they did before. I know I am, so I think giving the man some rights rather than taking them away would make a difference.

**The Chair:** Thank you very much, Mr Tillie. Let me apologize, as well, for the placement of the mikes and the difficulty it offered you.

**Mr Tillie:** Yes, when I bend over, it is hard to breathe.

**Mr Fletcher:** I had a question. Have we dismissed this?

**The Chair:** Well, we did go through a rotation, Mr Fletcher.

**Mr Fletcher:** It was more or less on a clarification, as Mr Sorbara said something about me. I do not know.

**The Chair:** I see. Go ahead.

**Mr Fletcher:** As far as the debtors' prison is concerned, I am not sure what he was talking about. I was out of the room. I do not think—you can check the records, I guess—I said anything about the debtors' prison. It was not on my lips. It did not come out of my mouth.

**Mr Kwinter:** Mr Chairman, if I can clarify, what he really said when they talked about the debtors' prison, you raised that: "Well, you can serve on the weekends, so it's not a real problem. You can work during the week and go to jail on the weekends."

**Mr Sorbara:** Let me answer that.

**The Chair:** Excuse me, I think we have—

**Mr Sorbara:** Mr Chairman, if I might just explain—

**The Chair:** Mr Sorbara, I think we have explored this issue adequately. You have made your statement. Mr Fletcher has had his response. Mr Kwinter has spoken as well. I think that is sufficient.

**Mr Sorbara:** I would like to hear more from Mr Fletcher on this subject.

**The Chair:** I am sure you would, and I am sure you will have ample opportunity over the next several weeks.

Interjections.

**The Chair:** If we have the opportunity to, perhaps we can continue this conversation. In the meantime, we may have some witnesses waiting for us and I do not think we should tax their patience further. Terry Turner is next on the list. Is Terry Turner present? Mr, Miss, Ms Turner is not present. I would then suggest we move on to Mr Inwood, Kirby Inwood. Is Mr Inwood present? I heard earlier that he might not be able to attend. I would suggest at this point we can adjourn.

**Mr Sorbara:** Can I fight with Mr Fletcher now?

**The Chair:** You can certainly do so in the privacy of the hallway. We are recessed until 1:30 this afternoon. Thank you.

The committee recessed at 1148.



## AFTERNOON SITTING

The committee resumed at 1332.

NATIONAL ASSOCIATION  
OF WOMEN AND THE LAW

**The Chair:** I would like to call us back to order and welcome Nicole Tellier from the National Association of Women and the Law. As you may know, we have approximately half an hour. We are even close to being on time. Divide that time however you wish. Typically it is half for your presentation and half for questions from the various caucuses.

**Ms Tellier:** By way of introduction, I am on the steering committee of the National Association of Women and the Law, but I am also a practising family law lawyer and therefore can bring to bear some personal experience with family law on this issue.

For those of you who do not know, the National Association of Women and the Law is a national non-profit feminist organization whose mandate is to promote women's equality through the law. We do that through research, public education and lobbying. We have lobbied on a variety of issues both at the federal and provincial level, including family law issues, tax reform and constitutional reform. We have a particular interest in this issue, because the overwhelming majority of recipients of support orders are women and children.

I would like to begin by addressing some general comments regarding the principles and the stated purpose of this legislation, and then I will address more specific concerns.

On a general note it is very refreshing to be in a room presenting on a bill that NAWL supports. All too frequently we are not happy with the current law, and we are very much in support of state-funded support enforcement and recognize the real need for this bill and the improvements it hopes to achieve in the current enforcement system. But I would like to make a few comments related to that issue.

I would gather that one of the other purposes is to alleviate the drain on human resources faced by the government in its current enforcement maintenance system. I would like to let the committee know that NAWL is aware that current employees are working under very difficult working conditions. It is my understanding that a number of them are part-time and in limited contractual positions, thereby making benefits unavailable to them. Their case load is horrendous and the training is somewhat limited.

Although NAWL's direct interest in this legislation is to make sure that the money is received by those who need it, we are concerned about the working conditions of the people who are in the enforcement branch, since they are predominantly women as well.

I would also like to point out it is NAWL's submission that support enforcement alone is not sufficient to eliminate the poverty of women and children. We urge this government to investigate and take positive steps through legislative reform and judicial education to address the issues of poverty. I am speaking now more specifically

about the quantum of support orders. The bill before us will help us to enforce orders as they stand, but this is something that the government can deal with, under its current legislation, by strengthening preambles in the Children's Law Reform Act and the Family Law Act, through judicial education. If the stated purpose of the bill is to eliminate women's and children's poverty, then this bill must be seen as only one part of a larger program to do that.

I would also like to take this opportunity to remind the committee that the issues of support and access are not related in law. You may be hearing from other groups that will attempt to do this. The Ontario bar is completely unanimous in its position on Bill 124, was unanimous at the time that bill was tabled: NAWL opposes that bill. It is our view that the current laws, as they relate to access, are adequate to deal with the very few access problems that arise that cannot be dealt with through negotiation.

I would also like to add on that point that when the first enforcement bill came in there was an abundance of empirical data to support the need for state-funded enforcement programs. There is no such empirical data that is reliable as it relates to the issue of the need for access and access enforcement.

With respect to the bill specifically, I have in my brief a section entitled "Clause by Clause." I have not made comments on every clause because I only have concerns about a few of them and obviously I am limiting my comments to that.

I note that the definition of "income source" in subsection 1(3) does not allude to federal sources of funds. I do not know whether it might be appropriate to make it clear; I am thinking now of Unemployment Insurance Commission. I am wondering whether it might not be prudent to amend or make an addition to the bill to make it clear how the enforcement of these funds are going to continue or if there are any changes in that area.

The much more difficult and problematic issue for me in this piece of legislation relates to subsection 3(1) and section 3d, section 3f and section 3g. These are the sections that deal with withdrawing, opting out and suspending. Now it may be that I am having difficulty in understanding the legislation, and if I as a lawyer am having difficulty understanding it, then perhaps it is in need of some clarification.

The difficulty I have is this: It would appear that you have set up two different tests. It would appear that under subsection 3(1) the ability to withdraw a support order, presumably at first instance, is permissive. It says, "A support or custody order may be filed with the director's office." In other words, the recipient spouse on filing the notice that is referred to in the next subsection can opt not to have the support order enforced. Yet later on in the legislation it is very clear that a support deduction order, which is clearly a different order from a support order, requires a suspension by court order on a motion. In other words a recipient who wishes to opt out or bring a motion

to have a support deduction order suspended must do so at her expense upon motion and there must be a judicial determination.

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It is not clear to me why there are two different standards as it relates to the ability to withdraw or to opt out. The stated purpose says that there is no opting out, that it is mandatory, but it is pretty clear that when you are filing your original support order there is an ability not to have it forwarded to the support and custody orders enforcement branch.

Unless I have totally misunderstood the legislation, on the face of it there appears to be this different standard depending on when you wish to withdraw. Now this raises a serious policy concern because as I read the legislation, there are two points at which you may or may not be able to withdraw or get an order for suspension. I think it is important that the policy that informs this legislation be clear. Is this something that is mandatory or is it something that recipients may opt out of if they so wish? If you choose provisions which allow opting out, then I think they should be consistent.

I would also submit that there are important policy reasons why you might want to make it mandatory and I have set those out in the brief. From the perspective of the global objectives to be achieved by this bill, I think that a mandatory system will serve to normalize support deduction, which I believe is a clearly stated intention of this legislation. It will become normal. In time people will perceive it to be a normal course of events that support is deducted at source. If we have a completely mandatory system, then that aim will be achieved.

However, if there is to be some way of opting out, I am somewhat sceptical of the kind of judicial determination that is proposed. It will take up a considerable amount of court time and it will be at the expense of the party who wishes to withdraw.

The other important policy objective that might be achieved by making it mandatory is related to, for example, a woman being threatened. Her estranged male is someone who has been violent towards her and she feels intimidated and she is being threatened to opt out of this program. If she does not have the choice and she simply says: "Well, it's mandatory. It's out of my hands," there is some protection for her.

The other important policy objective is that I am concerned if someone chooses to be out of the system the support order later enters into arrears, and all the statistics suggest that this is quite likely to happen at some point during the time that the order is in effect. There may be a lag time, and this is a common problem with the current SCOE system, a considerable lag time in getting it back on stream.

To summarize then, I think there are important policy considerations. The committee should be clear about what they are and therefore the legislation should be consistent, and as I see it, it is not right now.

There are a couple of other areas where I would suggest amendments. There are, as a matter of course, orders that are made that are retroactive. This is going to pose a

practical problem for the employer or the income source and you have not turned your minds to that issue, at least it does not appear that you have and I would suggest that you do. Otherwise, it will be very difficult for the employer since you have a formula that caps how much can be done on an ongoing order. If there is a retroactive order which effectively puts a support order into arrears as soon as it is issued, you are going to have a problem and you must address this.

The other practical problem that is not addressed that should be addressed is the cost-of-living adjustment. As I am sure you are aware, the Family Law Act provides a statutory cost-of-living adjustment and again, if the obligation is on the income source to deduct this amount and usually, the amount is not specified, it is simply a term of the order and presumably a term of the support deduction order that a cost-of-living adjustment will be made pursuant to some formula.

The employers are going to need guidance on this. They are not in the practice of phoning Statistics Canada and figuring this out. If that order is to be kept current and enforced, which is the objective of this legislation, then you are going to need clearer language in the bill as well as in the regulations.

Both those issues must be added to this bill if it is going to be administratively smooth and if you are going to avoid the complaints of the employers who are going to have to become involved in this process.

I would like to say on a positive note that I am extremely pleased with the amendments with respect to the ability to pursue other support enforcement remedies at the same time or at a later time. This was a badly needed amendment. Similarly I am extremely pleased with the ability to file a statutory declaration that effectively brings the writ of seizure and sale up to date as it relates to arrears.

Subject to any questions, that is all I have to say on the clause-by-clause analysis, but I would like to make a comment on the constitutionality of this legislation.

It may be that once this proposed legislation is enacted this government will be faced with Charter of Rights and Freedoms challenges. I would anticipate a section 7 charter challenge on the argument that section 7 includes a right to privacy of the individual and that support deduction orders are an infringement of that section 7 right which enshrines privacy. It leaves to be seen whether privacy is in fact a section 7 right. I would submit that section 7 can also be read to include a right to security of the person, and if that right is read in keeping with international human rights legislation, this would include the right to the basic necessities of life such as food and housing.

Therefore, balancing the individual's privacy right as against the right of the collective of women and children to a basic standard of living, I believe that the rights of the collective must supersede and that it would withstand a charter challenge on that basis.

If it did not withstand a charter challenge on that basis, I am confident that it would withstand a charter challenge on the basis of section 1 of the charter. The purpose, the stated social objective of this bill is clearly important. The



main attack would be on whether or not Bill 17 adopts the least intrusive means. There may be those who argue a support deduction order is not the least intrusive means, but I think the data and the problems we have seen under the previous system show that it has not worked and that more intrusive means such as these are necessary, and I believe constitutionally valid.

On closing then, I would like to recommend to the committee that you strengthen the preamble, that you adopt a consistent approach regarding the withdrawal of support orders and the opting-out and suspension provisions of the support deduction orders, that you include provisions for cost-of-living adjustments, that you include provisions for retroactive orders, and finally, I would recommend that the government take positive steps to deal with the issues of the inadequacy of the quantum of spousal and support orders, researching legislative reform and mandatory judicial education. Those are my submissions.

**The Chair:** We have a slight abridgement in our schedule this afternoon and we have gone over a touch. I would still would like to have at least a quarter of an hour for questions for Ms Tellier. With the indulgence of the government caucus, Mr Wessinger had some responses. Mr Wessinger is the parliamentary assistant to the minister and is carrying the legislation.

**Mr Wessinger:** Yes, thank you for your presentation, Nicole. I would just like to make some comments on some of your points.

With respect to unemployment insurance and other federal payments, at the moment we cannot legally collect these amounts from federal government sources, but we are working on trying to get the agreement of the federal government to this, and if that agreement is obtained, then we will make the necessary changes in the legislation or regulations to cover that. But that is being worked on right now. We can presently get it by garnishment.

**Ms Tellier:** Yes, I realize you can get it by garnishment.

**Mr Wessinger:** With respect to the question of the two orders, there evidently are different rights attaching to the initial order as distinct from the support deduction order and those other rights of course are default hearings, garnishment, writs of seizure, so in fact the recipient can elect to remove that initial order and opt out of those rights being exercised by SCOE. But the intention is that they not be entitled to opt out of the support deduction except under very specific requirements. You would not of course have had the proposed amendment in front of you when you did your brief, but there is a proposed amendment to the opting out which requires the posting of four months' security, as well as the consent of both parties—security in cash, I might add.

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**Ms Tellier:** I would suggest that if there is going to be a judicial determination at that point, that you leave it to the discretion of the trial judge. You have used the word "adequate" in that section and I would suggest "appropriate" as an amendment, because if someone has a perfect track record and the recipient wants to opt out, four months seems to me somewhat arbitrary. If it is going to

require judicial determination to suspend anyway, then it should be fact specific. For many, four months is not going to be enough. For others, it may be too much. If it has to be before a court anyway, then I suggest you leave it to the trier of fact.

**Mr Wessinger:** In many cases, of course, there is often no track record with respect to this whole question, because it is an initial situation.

**Ms Tellier:** Then you can delineate that. You can say that where there is no track record, this will be the minimum; otherwise, you will leave it to the court. That is one of the problems with this whole section. I am still not clear that your comments clarify for me the difference between the ability to withdraw your order as opposed to withdrawing your support deduction order, because if at first instance the recipient under subsection 3(1) opts out and does not file the support order with the director, then there is not going to be a support deduction order. That is all.

**Mr Wessinger:** No. In fact there will be a support deduction order issued right at the time of hearing. The support deduction order is issued at the time of hearing and is sent to the branch for enforcement right at the time of the initial court hearing. It is done by the court.

**Ms Tellier:** But the support order, as opposed to the support deduction order, is being withdrawn from the director. That does not seem to make sense to me.

**Mr Wessinger:** In fact, you are quite right. You could have the situation where the support deduction order would be filed initially—

**Ms Tellier:** But she has opted to withdraw the actual order.

**Mr Wessinger:** The actual order, yes, that certainly is—

**Ms Tellier:** That is the inconsistency from a policy perspective that I do not understand.

**Mr Wessinger:** I think the policy decision behind it was to make the support deduction basically universal and almost mandatory and to leave the other enforcement mechanisms optional. That is the policy basis of it.

**Ms Tellier:** Okay.

**Mr Wessinger:** One other comment about the retroactivity aspect. I do not know whether I understand your concern about this aspect, because first of all, if a retroactive order is made by the court, it can only be collected up to 50% from any pay of the payer and it would be collected over a period of time. I was wondering what your concern was with respect to that.

**Ms Tellier:** As it stands now, a judge will make an order and he or she will simply say, "It is retroactive to X date." Who then determines? Is this the director who determines? The order is issued and entered. The registrar makes sure that the form is filled out so you have a support deduction order. The support deduction order goes to the director, who in turn goes to the income source. Who is going to determine the mathematics if there is some leeway? Are you going to automatically go up to the maximum? Are you going to consider the retroactivity arrears? Because there are different remedies for arrears and it

seems to me there is some discretion as to how you deal with arrears as opposed to ongoing support.

I also heard, by the by, that there were some amendments to your formula which I am not aware of, but I think what I am getting at is perhaps there needs to be a little bit of clarification as to how these orders are going to be administered.

**Mr Wessenger:** There is certainly not going to be a retroactive support deduction order. That would be obvious. The support deduction order is not going to be retroactive, even though the court order might be retroactive.

**Ms Tellier:** It cannot be, and you have a clause which deals with when it becomes effective, but from a practical perspective the support order awards retroactive support. So you have an employer faced with the immediate problem of an order that may back order six months. It is not technically arrears; it is—

**Mr Wessenger:** I think that is the way certainly the branch would consider it, as arrears. Any retroactive order would be deemed to be arrears.

**Ms Tellier:** So you think the legislation is very clear. The director and his lawyer are not going to have any problems with this.

**Mr Wessenger:** I am just saying that is the interpretation that is being given to it. Certainly, we can take a look at it again to make sure it is clear, but as far as ministry staff are concerned, they do not believe there is an ambiguity in that area.

**Ms Tellier:** As long as it is clear to the employer.

**Mr Wessenger:** One other aspect is, presently SCOE does give information to employees with respect to cost of living, so that will continue to be done so in the future.

**Ms Tellier:** No, I meant the employers.

**Mr Wessenger:** To the employers? Yes, it is presently being given to employers, the cost-of-living increases.

**Ms Tellier:** The employer has an order that may have a very complicated formula with respect to cost of living. It is then, it appears to me, the obligation of the employer to phone up Statistics Canada to try to make sense of that section in the family law, to determine what the COLA was for the last year, to make a record of it, then the next year when there is a new COLA. Are you saying that is all going to be done by the director?

**Mr Wessenger:** That is done now by the director. The director determines the amount and advises the employer.

**The Chair:** Are you finished, Mr Wessenger? Mr Sorbara. Again, with the indulgence of the committee, we have gone a little bit over time and probably will continue to.

**Mr Sorbara:** No, we have not gone over time at all, Mr Chair. We have had a very interesting discussion between the government and a witness before a parliamentary committee, a committee that is supposed to be made up of not government members—they are here to assist us, not to question the witness. So as far as I am concerned, we have not gone over time at all. We are just beginning now for the committee members to question the witness.

**The Chair:** Mr Wessenger is a committee member as well, sir.

**Mr Sorbara:** He certainly is, but in this capacity, sitting in that chair with the assistance of policy advisers from the staff of the Ministry of the Attorney General, he is representing the government, not the committee. There is nothing wrong with that.

**Ms Tellier:** I am happy to hear your question, Mr Sorbara.

**Mr Sorbara:** Well, we are having a little battle about these things. I am sorry to have to take up your time with these little battles, but it is important to us. We only have a very limited time to ask the questions.

**The Chair:** Thank you. Mr Sorbara, please.

**Mr Sorbara:** You were among the first witnesses before this committee who both support the general thrust of these amendments and who seem to be arguing in favour of a more flexible approach to who should be caught up by the legislation and who should not be caught up. You seem to have a criticism of the four-month provision and you suggested I think that there should be more judicial discretion in determining who is in and who is out.

**Ms Tellier:** That is incorrect. I am afraid you missed the beginning of my submissions, where I addressed that issue, so perhaps I could clarify it.

**Mr Sorbara:** Good.

**Ms Tellier:** What I did say is that I thought, and it has been somewhat clarified, there was an inconsistency with respect to withdrawing the support order at first instance and opting out or seeking judicial determination in order to get a suspension order. I felt that the policy that was informing the legislation should be consistent and clear, and in fact on balance I would suggest that a mandatory approach be appropriate.

But vis-à-vis your comment about judicial discretion, I premised that comment with, if this section—I believe it is 3d—stands, and I was just advised of an amendment, I would suggest that rather than picking an arbitrary four months, yes, I would suggest that. If we are going to have that clause, then you may want to have minimum standards if there is no track record. But I believe that is something that should be left to judicial discretion, since the judge is going to have to decide whether (a) it is unconscionable—and I did not even get into the difficulties with that one—or (b) there is consent, and that has to be determined by a judge on the reading. The other thing the judge has to determine is, what security?, and I suggested that the word “adequate” be substituted with “appropriate.”

**Mr Sorbara:** Okay. Let me see if I can hear your position clearly then. What is it? That you prefer an approach that brings everyone in?

**Ms Tellier:** Yes.

**Mr Sorbara:** Everyone in. So you would actually discard these avenues out, that is consent, judicial approval and security, or the other avenue out, that is unconscionability.



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**Ms Tellier:** No, that is not what I am saying. I am sorry if I have not made myself clear. Everybody is in, and if at some later point in time you want to get out, there is judicial determination.

**Mr Sorbara:** I am talking about—

**Ms Tellier:** Okay, that I do not have a problem. What I had a problem with was a different standard for getting the support order not in, but it has been explained to me that even if you withdraw the support order, there will automatically be a support deduction order, so that has satisfied my concerns about the mandatory approach. Have I answered—

**Mr Sorbara:** No, I am still not satisfied that I understand your views on this matter. That is to say, going in initially, the government's position is that virtually everyone should be drawn into the system by way of the automatic deduction system, into this net.

**Ms Tellier:** I support that.

**Mr Sorbara:** You support that. So they have two avenues out: One is unconscionability and the other is the posting of security with judicial consent and obviously the consent of the parties. How do you feel about that as an initial out?

**Ms Tellier:** I hope it does not clog the courts. I have some concerns from a very practical perspective, because I do practise family law and I would hate to see a lot of judges' time spent on this issue, so perhaps some guidelines as to security will make that easy. It is difficult to even get a 10-minute hearing on the quantum; if we are going to now clog the courts with whether we are in or we are out, we are not going to get fair hearings on quantum, and I am very concerned about the scarcity of judicial time as it relates to support as it is. So I have that concern, but I do think, on the security issue, that should be a matter of judicial discretion.

**Mr Sorbara:** So you would not favour greater discretion to allow those who need this enforcement technique to use it and those who do not need this enforcement technique to relinquish it or not be caught up by it.

My problem is this, let me be quite frank: It seems to me that this provision, although it is couched in dealing with child poverty, does two things. It alleviates the pressure on the branch to determine where to put into place a garnishment order, which in effect does the same thing—it is an automatic deduction order by another step or a different legal avenue—and it also allows the branch to, by way of bringing everyone in, protect itself from situations where it might be accused of not acting quickly enough to secure either a garnishment or some other enforcement technique. In other words, it is more of an administrative measure within the government to deal with moneys lost or resources ineffectively used. In fact the previous Attorney General who was working on this said, "We are doing this because our branch is not operating well with the kind of enforcement techniques that we have."

**Ms Tellier:** I would like to respond to that. That is an important comment. I said in the beginning that I thought

there were two aims and I think they are both totally legitimate aims. One of the aims is to ensure that women and children get the money they need, and that is clearly—you know, all the statistics that I am sure you are aware of point to a problem.

The second aim is an administrative aim, and I think it is a totally legitimate aim, that under the current system you have employees who are overworked. It is an impossible administrative burden, it is costing the taxpayer a fortune, it is not working well, and I think it is a totally legitimate aim to share that burden among employers and have the system that is being proposed here.

**Mr Sorbara:** I agree with you. My own personal dilemma and my political dilemma is, is it worth it to save those resources? Government could say, "We will double, triple or quadruple the budget of the branch and have a more effective administration under the present system so that we can have a garnishment in place like that, as soon as our computers say there has been a missed payment, and our computers tell us exactly where the debtor or the payer is." Is it worth it to save the money that we would have to spend on that kind of system to catch everyone in the net?

**Ms Tellier:** Yes, because no matter how efficient that system is, no matter how many employees, no matter how many computer terminals, you have court appearances, you have financial statements, you have all kinds of problems with the current system and this makes it nice and neat. From the minute the order is issued, that woman is going to get her money, and yes, it is worth it.

**Mr Sorbara:** I just want to suggest to you, from my experience in government, the idea that it is going to be that neat does not always work out in fact.

**Ms Tellier:** That is why I think it is important that the obligation on the income source is very clearly set out. I am sure you have heard from employers and you must get them on side and you must do everything within your powers to make sure that this is done. You know, they are complaining about now having to collect GST, and I am sure they are going to complain about this.

**Mr Sorbara:** Actually, the fact is that they are not complaining about this, and that is one of my concerns. If the chamber of commerce likes it, the Canadian Federation of Independent Business likes it, if the major employer organizations like it, why do I like it? We generally do not agree on all these things.

**Ms Tellier:** Well, we all like it, there solves the problem.

**Mr Carr:** You mentioned about the clog in the court system and being a practitioner. We heard this morning that in order to get a support order changed because of circumstances, financial or whatever, it might take up to a year. Is that your understanding as well?

**Ms Tellier:** Are you talking about an application to vary an existing order or a material change in the circumstances?

**Mr Carr:** Yes, when you go before a judge to change the order, for whatever reason, circumstances change, you go on unemployment or whatever, it could take up to a year.

**Ms Tellier:** I practise in Toronto, but also in the districts. That may be true in Toronto, but there is a fairly summary manner by way of application to seek a variation and it does take some time, but it certainly need not take anywhere near that time.

**Mr Carr:** But places like Toronto and surrounding areas, the greater Toronto area.

**Ms Tellier:** I am in Peel, which is one of the busiest jurisdictions. No, that seems a little bit of an excessive amount of time. I think the government has done this to give us more judges. We can always use more judges.

**Mr Sorbara:** For the judges' sake.

**Mr Carr:** And the lawyers, I might add. But what would it take then, if it is not a year, to get something changed? If I went to the court, and because circumstances have changed in my financial position now and I am in the Peel area, and I want to change—

**Ms Tellier:** Normally what would happen, it could be issued the first appearance; you adjourn it for cross-examinations; you complete cross-examinations within a couple of weeks; you can get your transcript within a couple of weeks and you have the option to argue on the transcript, which means the whole thing can be completed within three months. If you choose to proceed by trial, then you are at the mercy of the trial list of your particular jurisdiction. But very frequently applications to various support orders are proceeded with on that summary fashion on transcript evidence alone; with the pre-trial, they settle.

**Mr Carr:** What percentage of the cases would that be? Half, would you say?

**Ms Tellier:** Drawing from my own practice, most never even get that far. All you need is to exchange the documents and see the figures and maybe have a pre-trial, and that is the end of it.

**Mr Carr:** But somebody could potentially be looking up to a year before it changes then, right?

**Ms Tellier:** Yes.

**Mr Carr:** Were you consulted with the Attorney General on Bill 17? The new Attorney General?

**Ms Tellier:** No I was not and that is most unfortunate that I was not.

**Mr Sorbara:** It would have been a better bill had you been consulted.

**Ms Tellier:** We were consulted by the previous Attorney General on a regular basis, but I recognize that this is a new government and it may not know all the players. I am happy to be here now.

**Mr Carr:** I am sure the parliamentary assistant might have the phone number for you.

**The Chair:** I am sure note will be taken of that omission.

**Mr Carr:** Just to clarify again, sorry to go back on this point with the previous questioning, but your feeling was then that you would like to see as many people in this system as possible, rather than having two parties agree that no, we would like to opt out for whatever reason. You

would rather see more people come into the system and become mandatory.

**Ms Tellier:** I am saying there is a presumption it is mandatory. Everybody is in. If you want to opt out, this is how you do it.

**Mr Carr:** Through the judge.

**Ms Tellier:** Yes.

**Mr Carr:** Okay.

**The Chair:** I apologize to the government caucus. The government caucus time was already taken up. It was not clear, obviously, to all the opposition members, though. Thank you very much, Ms Tellier, very decent presentation.

**Ms S. Murdock:** We will take it up the next time.

#### ONTARIO ASSOCIATION OF INTERVAL AND TRANSITION HOUSES

**The Chair:** We have a presentation now from the Ontario Association of Interval and Transition Houses, commonly known as OAITH. I believe it is Ms Duggan and Ms Kotarski. Could you identify yourselves into the mike as well.

**Ms Duggan:** My name is Lisa Duggan and I am a front-line shelter worker in a shelter in Hamilton, and I am also a member of OAITH, which is the Ontario Association of Interval and Transition Houses.

**Ms Kotarski:** My name is Joan Kotarski. I am also a member of OAITH and I am a co-ordinator with Guelph-Wellington Women in Crisis in Guelph. We operate three programs: Marianne's Place, our shelter for abused women and their children, a rural women's shelter program and a sexual assault centre.

**The Chair:** As you were here before, you know we have half an hour. We will have to presume it is half an hour; we may be able to add a little extra time. Please divide your presentation along those lines and start when you are comfortable.

**Ms Duggan:** Just prior to going into our brief, I would like to introduce what OAITH is. OAITH is an 82-member provincial organization that advocates for abused women and their children, and OAITH believes that Bill 17 is necessary and much-needed legislation in the province of Ontario. We chose not to come here today and share heart-warming personal stories about women and their children, stories that are actually not heart-warming at all but tragedies, stories of tragedy and human rights offences. If we did that, we would be here more than half an hour, and we realize that. But we do feel that the statistics speak for themselves.

Single mothers and their children are the largest-increasing category of poor in this country, and we commend the NDP government for acknowledging their difficult financial circumstances by introducing this bill.

The National Council of Welfare report entitled *Women in Poverty Revisited*, which I hope all of you have read at some point, recommends on page 87, recommendation 19, that, "All provinces and territories should allocate the necessary resources to ensure the speedy enforcement



of all spousal and child support obligations." We feel that the issue of support is very separate from the issue of access and custody, and I am concerned about the focus that has been placed on access in the presentations to this committee and by some committee members themselves, when clearly the purpose of the presentations is to address the issue of support in Bill 17.

I would like to remind you that we are talking about the best interests of children, not commodities that can be bought or sold or traded. Access is not something that can be exchanged for support. OAITH of course is prepared to discuss our position on access at some point in the future, and I would also refer you to our brief to the standing committee on social development at the Bill 124 hearings. If you are interested, a copy of that presentation can be obtained through the OAITH office, and we are prepared to be involved in any future consultations re access. However, like I said before, access is a very separate issue and that is not what we came here to discuss today.

We wish to talk about support and, as mentioned in our brief, in 1989 only 26% of Ontario support orders were being enforced, although 220 people were reported to be working in the Attorney General's support enforcement program at an annual cost of \$13.9 million. Before the support enforcement program was begun by Ontario three years ago, only 15% of the orders were paid. Mr Scott, who was then the Attorney General, on 6 December 1989 said to Mr Laughren, the now Treasurer of Ontario, that, "We began in Ontario with an enormous disadvantage in the sense that 85% of the support orders that were made in the province, most of which involve young children, were not being honoured."

Clearly, the support enforcement program has helped to increase the payment in support orders; however, 90,000 children in Ontario are still affected by non-payment of court-ordered support representing \$230 million in arrears payments. Now 97% of Ontario's orders are for men and 75% of those are for child support. These figures are evidence that action must be taken, and Bill 17 is a good first measure in ensuring that the non-custodial parent is accountable for maintaining financial responsibility for his children.

This legislation recognizes the importance of the need to enforce spousal and child support obligations by the non-custodial parent, yet there are some gaps that exist which do not address some of the special needs of abused women and their children. One out of four women in Canada is assaulted by her partner, and many abused women and their children try to escape and separate from their violent partners only to experience continued harassment, threats and financial control by the abuser. Once again, the statistics speak for themselves. If we are serious about confronting the problem of wife assault, then we must attempt to address the concerns of abused women and their children in our legislation.

On page 16 of Bill 17, subsection 3d(3), we feel it is necessary for the inclusion of an harassment clause. Without such a clause, abused women are left unprotected and vulnerable to the threats of their violent partner. This means that it is very probable that women could be co-

erced into writing a letter to the director or to a lawyer to go through the court system requesting the suspension of a support deduction order.

An harassment clause in the legislation would recognize that abusive men continue to exercise power and control over abused women and their children after separation, and this clause would offer some protection in guaranteeing the continuation of support payments on an ongoing basis. So OAITH recommends that the development of an harassment clause be done in consultation with abused women and their children and also their advocates.

Another section of Bill 17 which concerns abused women is found on page 6, subsection 3(8), and also on page 24, subsection 4(2). These clauses state that women who receive GWA or FBA have no choice but to pursue a support deduction order and women cannot request the withdrawal of any such order. OAITH believes that this lack of choice penalizes poor women but it is particularly damaging to assaulted women. The inclusion of the latter clauses do not acknowledge that abused women may have valid reasons for not pursuing a support deduction order.

It must be recognized that violent men use controlling tactics to maintain power over their partners. If an abused woman needs social assistance to escape the continued threats and abuse of her partner, the financial assistance must be provided without conditions. By forcing abused women to pursue support payments, their safety and their children's safety is jeopardized by the continued and forced connection to an abusive partner.

The fears of women of course are based on reality. In our presentation in November 1990, which was referred to yesterday, we presented to all MPPs OAITH's background lobby report, entitled *Balance the Power*, which you all probably have a copy of. It documents the names of many women who were murdered by their partners after separation. Most killings of assaulted women are the result of intentional life-threatening behaviour by batterers, and clearly access to abused women is an important factor in predicting lethality. If the batterer cannot find her, he cannot kill her. Therefore OAITH requests that the clause outlining mandatory pursuit of support deduction orders by women receiving GWA and FBA be removed from the legislation.

**Ms Kotarski:** In subsection 3c(3) it is stated that the director serves notice of a support deduction order to the income source. OAITH commends the government's recognition that it is important to involve the debtor's income source so that payments of support can be guaranteed. However, there needs to be a mechanism in the legislation that ensures that non-custodial parents who are self-employed or independently wealthy also pay the support deduction order.

In the legislation, the issue of confidentiality must also be addressed in more detail. Although we acknowledge that the legislation attempts to protect the confidentiality of the debtor, page 14, subsection 3c(17), there is no corresponding clause which protects the receiver of support. Any information that may assist the debtor in locating his partner must be kept confidential so that she and her children remain safe. This needs to be clearly outlined in Bill 17.

OAITH applauds section 12 on page 30, which holds the debtor responsible for the disposition or wasting of assets. This is often a tactic used by abusive men to control abused women. Based on the experience of abused women, OAITH would also recommend the inclusion of the vandalizing and/or destruction of assets.

OAITH also is pleased with section 12a on page 30, which incorporates the inclusion of consequences if there is any attempt to avoid support payments. We would like to see included in subsection 12a(1) that any financial fines obtained from the wilful contempt of process by the debtor and/or the destruction, disposition or wasting of assets be given to the receiver of support. The receiver of support should be compensated for loss of assets or wilful delay of process.

There are other laudable clauses included in Bill 17 that can be endorsed by OAITH. Page 12, subsections 3c(12), 3c(13) and 3c(15) acknowledge that the community plays an important role in ensuring the enforcement of support deduction orders. Subsection 3c(19) identifies that priority must be given to the payment of support. By including these clauses in the legislation, the government is recognizing that both the individual and society are responsible for the financial wellbeing of all women and their children.

In conclusion, Bill 17 is important and necessary legislation that attempts to address the feminization of poverty. Statistical evidence shows that children of single mothers are growing up poor. Among separated women, 47% with one child and 96% with three children live in poverty. Poverty encourages dependency on the incomes of violent partners and prevents women and their children from escaping abuse. Bill 17 offers abused women and their children some financial hope in breaking free from a violent partner, but the intent of the legislation will be considerably weakened without the following: inclusion of an harassment clause; mechanisms to ensure payment of support by self-employed or independently wealthy debtors; issue of confidentiality; the choice to defer a support deduction order for women receiving GWA and FBA; inclusion of "the destruction of assets" by the debtor; financial compensation for the receiver of support when assets are wasted or destroyed.

OAITH requests that the standing committee on the administration of justice recommend that the NDP government include the latter suggestions in the body of Bill 17. By incorporating these concerns into the legislation, the government of Ontario is using the legislative process and is displaying the political will that is necessary to improve the daily lives of abused women and their children.

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**Mr Elston:** I have got a couple of questions. I was just asking some of the staff here if there was any prima facie case made for a woman and children who were in receipt of FBA, if they could just file that as initial prima facie of need for the hearing. I suppose that that would be an alternative. The real problem is having the people come face to face in the cross-examination rooms, having to go through all those paper contacts. If there was a means by

which the separation of the two could be retained, would you see that as a useful way of still making sure that Community and Social Services got their repayments when there was ability to pay? Because without an order there is no payment required at the moment, right?

**Ms Duggan:** Are you asking specifically, for clarification?

**Mr Elston:** If they did not have to appear in cross-examination but merely presented evidence that they were considered eligible for FBA or GWA as part of the evidence, could that be seen to be sufficient to indicate an establishment of need, at least to the level of FBA or GWA received, so you would not be as concerned about the need to apply for support?

**Ms Kotarski:** I guess our concern comes primarily from our concern for the abused woman and her children and their safety.

**Mr Elston:** I appreciate that.

**Ms Kotarski:** And so anything that can be done to increase her safety is what we would be for. I think we need to know what that would be—

**Mr Elston:** So as long as you could maintain confidentiality of location of settlement and removing the contact where there is abuse, an acceptable alternative might be found in those circumstances?

**Ms Kotarski:** That would be one step.

**Ms Duggan:** Specifically, the way that I think the legislation stands right now and the experience in terms of the GWA-FBA clause that we are referring to, the experience that abused women have right now is that support is deducted automatically from their cheque regardless of whether they received that or not.

**Mr Elston:** Yes, that is not helpful.

**Ms Duggan:** What we are asking is that women have the choice. Oftentimes what will happen is abusive men will use finances and economics as a way of controlling abused women. They say, "I will pay you X number of dollars, but this is what you are going to do for that," and what happens is that a woman has no choice but to actually go for support, for example if there was a no-access order and she wanted to leave the province and did not want support because of her physical safety.

I understand what your point is in terms of there being some way you guarantee that he cannot find her, and I think that certainly is acceptable. But I think what happens is abusive men will track abused women down. My point is that I think women have to be given the choice, and the way this legislation stands right now is that women do not have that choice to request the removal of a support deduction order.

**Mr Elston:** Just one other question: I note on your page 2, in the last paragraph talking about page 16, section 3d, the items really that give an opportunity to consent out of the enforcement or the deduction orders and things, is it your view that it would be better not to have those two means of not being included in the support deduction order?

**Ms Duggan:** No. I think it is important that women have a choice, once again. In terms of this clause, I think



women should have the choice. But I do think it is necessary to look at the special needs of abused women in that they experience exceptional circumstances where partners will certainly threaten them and say, "You are going to write this letter." Many, many women have told us those experiences in terms of other situations where partners have threatened them and said, "This is what you're going to do or else this is what's going to happen." There may not ever be an incident of physical abuse, but I do think it is important to keep this in so the woman has a choice. I would like to see the inclusion of a harassment clause.

**Mr Elston:** Okay, but you would not feel so strongly about preventing the possibility of coercion or whatever around this extraction of the consent as to ask for it to be removed? In other words, there was a suggestion made by the previous presenter that if everybody was able to see their partner and say, "Listen, this is all mandatory. Don't come to me," then that would provide a lot more protection in some ways because it then is not the choice of the abused partner and it would not be seen that abuse would win the day, so to speak.

But as long as you have these provisions in here, I guess the point might very well be made that there is some incentive to try again to exert the force to get the desired result. I take it that you are kind of caught on the horns of a dilemma here like we are as legislators. You like to have people having the choice or the ability to choose, but you sure do not want to have the legislation ending up with some place where coercion and abuse find a home, for instance.

**Ms Duggan:** That is why I think a harassment clause would attempt to address that. I acknowledge your point that we are really sort of caught, do you make this mandatory or not? What I believe in is the promotion of women's choice, and what happens to women in abusive relationships is that those choices are taken away from them. In terms of this legislation, you can look at the argument if you make this mandatory, instead of putting in a harassment clause, and take the approach that you make this mandatory, I think what happens is the woman is put in a position where it is like the testify or prison argument, where if you do not testify you are going to go to jail.

The same sort of thing happens in terms of if she does not go for this, then she is not looking after the best interests of her children when she is also needing to look at the safety of herself and her children. It is a real dilemma, of course, that women are put in, but I think that that can be addressed in a way through a harassment clause, as opposed to making it mandatory and taking out women's choice altogether. But it is a dilemma.

**Mr Elston:** And presumably the other side of this, although you have not really done too much advertising for your organization, is to provide support forums for women in this situation so that they can in fact manage to make decisions in relative—I should not say comfort, but at least in a more supportive area.

**Ms Kotarski:** Safety.

**Mr Elston:** Yes.

**Ms Duggan:** We would be more than willing to do that if the government was willing to give us money.

**Mr Elston:** I am not here pushing that, but that also was an important aspect, I take it.

**Ms Duggan:** Yes.

**Mr Kwinter:** I want to apologize. I was not here for your total presentation. I would like, if you could, just to elaborate on exactly the same point that my colleague was making. When you say that it is very probable that women could be coerced into writing a letter to the director requesting the suspension of the support deduction order and this harassment clause would prevent that, could you tell me how you see this harassment clause working and how it is going to prevent it?

**Ms Duggan:** We knew you were going to ask us that question.

**Ms Kotarski:** I will try. I think it is something that we need to spend some more time looking at. We need to make sure that what we are after, our intent, is to provide safety for women and their children. So we need to be careful about the wording, as the legislation needs to be worded in a way that will do our intent. I am not here trying to get out of saying what I think a harassment clause should be.

**Mr Elston:** But you are just here to advise, not to—

**Ms Kotarski:** Right. Thank you.

**Ms Duggan:** We feel it is not our job to draft legislation. Our job is to comment on legislation that is being drafted and to be involved in the consultation process around that legislation. But it is certainly your job to do that and our job to comment.

**Mr Kwinter:** If I could just pick up on that again for one minute, I am not asking you to draft the legislation. What I am trying to determine in my mind is you have a situation where a person who is getting support, who is being abused by a spouse, is potentially coerced into asking that that support order either be varied or dropped. You are saying that if we put some clause in, that could prevent that from happening. I just cannot, no matter how I think about it, come to grips with any kind of clause. If someone can be coerced into dropping their request for support or could be coerced into burying it, why could they not be coerced into ignoring the harassment clause? What is this harassment clause going to do?

1430

**Ms Duggan:** Nothing like a clause, or because you pick up the paper your partner does not hit you. Nothing is going to stop an abusive man from being abusive. Except I think there has to be recognition for safety of women and I think what that does is recognize the predicament that abused women are put into. It acknowledges that this is a possibility, that that may happen. Certainly an abusive man will be coercive whether there is a harassment clause in this legislation or not. But what it does do is acknowledge the special circumstances of abused women so they have some protection in the legislation. Abusive men will continue to be abusive, but what it does do is let them know it

is going to be recognized, so there is an attempt to deal with that problem.

**Mr Kwinter:** It would seem to me that there is protection now in the common law. If you are being abused you can lay an assault charge. I am not trying to be difficult, but I just cannot see what possible benefit there is in a clause that says, "Thou shalt not harass," or "Thou shalt not abuse." If you could do that, we would have no abuse. That is not going to deter anybody, in my opinion. I was just trying to get a feel as to maybe you had some magic formula that would deal with this.

**Ms Duggan:** We can only tell you what abused women say. I wish I had a magic formula. Like I say to all the women in the shelter, if I had a magic formula I could give you that would take away this problem, I would do that. But if you look at, for example, the directive that was handed down by the Solicitor General saying that if an assault has occurred then charges must be laid, that certainly has helped in terms of more charges being laid and giving the message to abusive men that this abuse will not be tolerated by our society. Also, I think having a clause in the legislation offers some more protection to abused women. It lets abused women know they are being heard.

**Ms Kotarski:** I would also like to respond briefly. I think your questions are interesting ones.

One of the things that is problematic in our society is that we have not recognized the seriousness of abused women and children. It is a problem that truly we are starting to recognize more and more, and I think it is really important for all of you and all of society to find out more about it. It is a very difficult issue. It is not one that has easy solutions. That is part of why we hesitate to give you the magic formula, because we do not have it.

**The Chair:** The gentleman who was to present at 2:30 has not shown up, so we have the opportunity to have a more full questioning, as has occurred already. Mr Carr.

**Mr Carr:** I just wanted to say how much I am pleased with the fine work you do. I was at your event right after the election and had a chance—in fact, I have a letter in to the minister now about a shelter in Oakville, because there is not one there, and you do such a fine job of lobbying I will maybe call on you for some guidance. We have a breakfast next Friday morning discussing it, and you may even be familiar with the people in Oakville trying to get the shelter. So I did want to say I really appreciate that.

During the divorces and separations—you mentioned that about 25% of women are presently assaulted. Does it go up during that period? I would assume it would be higher with people separating. Do you have any statistics?

**Ms Duggan:** Can you repeat what statistic you are referring to?

**Mr Carr:** The one in four women who, I think, were assaulted. So in a divorce, do you have any idea what that goes up to?

**Ms Kotarski:** He is suggesting that there is more violence when separations—

**Mr Carr:** Is that true or would I be wrong about that?

**Ms Kotarski:** I think there is some truth to that. There is a study from the US, for instance, that documents the incidence of murder that occurs during that period of separation, that the danger to the women is very great at that particular time. That is just one study. We feel there is a danger to women at almost any time in the relationship, and it is very difficult to predict when it is more dangerous. It seems to me reasonable to think about a marriage breakdown, where the man is going to be losing that person he has had a lot of control over; I think that must be very devastating to him. I have no idea if that is true, but one of the things we see is that violence can escalate at that point and it can be very dangerous to women.

**Ms Duggan:** And if you look at the statistics of women who have been murdered by their partner, many of those women have been murdered after separation. I think those statistics speak for themselves as well.

**Mr Carr:** There have been many reasons given for not paying. You are on the front lines and see it every day. There are quite a few reasons the spouse does not feel there is a responsibility to pay; there has been some talk that they cannot pay in some cases; and then you brought up the question of access.

I was wondering if, from your experience, you could help us with that, what you see as the major reasons. I know it is difficult, because one group comes in and says this is the reason and then somebody else, and of course the Attorney General's ministry does not keep statistics on that 75% or whatever. But being on the front line, do you see it every day? I was just wondering if you could give some guidance to this committee of what you see as the major reasons the children are not getting the money in their hands now.

**Ms Kotarski:** One of the reasons that often happens, particularly with abused women, and I may make a guess about other women as well, is that men do not feel they should pay, that men do not see that as their responsibility. There is some notion—

**Mr Carr:** Would that be a high percentage, would you say?

**Ms Kotarski:** I have no real way of knowing. That is just my guess at this point. One of the ways that is used is as punishment: If they do not give the women any money for the children, then somehow that may be a way of punishing her. They seem to be able to dissociate from the children, that they do not see that as punishing their children as well. I think we live in a patriarchal society and I think that is part of the difficulty, that men are given permission to make those choices that women are not given permission.

**Ms Duggan:** We also know our society is very connected to economics, very connected. The whole system is built on an economic system. When you look generally in our society, the more money you have the more power you have, so when abusive men hold that money, what they do is hold power and control over that woman; they could randomly make a decision to give money to women whenever they want to, and they have the power to do that and women have no mechanisms of getting that money.



**Mr Carr:** I guess the question I have, and I think I mentioned this earlier to the committee when you were not here—I was astounded with the 75% we talked about, but when you get into it, it is not always that. I hope this is not the case; it is a very high percentage. I guess you would not have any statistics on that, if it is a real high percentage in total.

**Ms Duggan:** In terms of the number of women? Are you asking the number of women who do not get their money? Is that what you are asking?

**Mr Carr:** Just overall the reasons behind it; if, as you say, they do not see it as their responsibility. This, of course, is what we are wrestling with. There are so many different reasons.

**Ms Kotarski:** I think one of the things this legislation tries to do, which I think is laudable—the previous speaker spoke about normalizing things so that it became a matter of course for men, primarily men who do the support orders, to take responsibility, that it is expected they will pay that money. I know it is really difficult, especially when we have serial monogamy. What I mean by that is that men will then marry other women and have children and have a family, and they have financial restraints and somehow the previous family is ignored. I think that is unfortunate. I think men need to be held accountable for that kind of action.

**Mr Carr:** Were you consulted by the new Attorney General on Bill 17 yet?

**Ms Duggan:** Specifically around this legislation, in terms of having mandatory support, we have mentioned that several times before in the past and we have again mentioned it in our Balance the Power booklet. So in terms of directly being consulted on Bill 17, we were not, but that is something we have mentioned many times in the past, how we felt this was necessary to have in place. But in terms of being consulted specifically around this, no.

**Mr Carr:** What about the killing of Bill 124? Were you consulted on that?

**Ms Duggan:** We are not here to talk about Bill 124, but if you want to talk to us about this afterwards—

**Mr Carr:** You brought it up in there and I just wondered if you were consulted on that as well.

**Ms Duggan:** We were not specifically consulted about Bill 124, no.

**Mr Carr:** Okay.

1440

**Ms Duggan:** Can I just add something to that? We were not consulted on Bill 124 by the previous government. However, we have on an ongoing basis, since Bill 124 passed the readings, met with several ministers and we met with the previous government telling it we were not happy with that bill and that we wanted it repealed. That is something we have been requesting on an ongoing basis, so yes, we were pleased when the NDP announced it was not going to push that through. So we were certainly there giving our opinions about that all the way along since the time that hearing happened.

**Mr Carr:** Thank you. I will call on your help for my Oakville situation, if I can.

**The Chair:** We have gone a little over time. We still have, I believe, five minutes or so left. Mrs Mathysen.

**Mrs Mathysen:** My question was answered in the course of the questions by the opposition.

**Ms S. Murdock:** I just wanted to make two comments, predominantly on what has been said by my colleagues, because it concerns me to put a harassment clause in when it has no effect. To me it would be a token, and I think the intent of the legislation itself is to protect women and children. Albeit I realize that the focus of your group is on abused women and children, the reality is that unless there were a penalty clause attached to the harassment clause it would be of no effect.

**Ms Kotarski:** It is a good idea.

**Ms S. Murdock:** But to finish that thought, even if you did put that in you would be repeating legislation that exists elsewhere in terms of assault or in terms of harassment, as Mr Kwinter has said. It is certainly something to think about and we will do that.

The other thing is that the case work I have done on FBA-GWA recipients, I was saying before other presenters that one of the arrangements we made with the Ministry of Community and Social Services office in Sudbury in my riding was because of the fact that Comsoc reduced the benefit cheque by the amount of the support order. Whether you had received that money or not was irrelevant, and that was putting a lot of women and children in hardship. So we made an arrangement with the local Comsoc and I recommended that it happen throughout the rest of the province, but I was only a constituency assistant at the time so I do not know if it happened. But in Sudbury what we did was that they would get an assignment after five days of not having received the payment from the support order, and after assignment was received for two consecutive months it was an automatic assignment.

So your suggestion of deferring or opting out of this piece of legislation—the universality of it I like about Bill 17, so opting out does not please me. I am wondering if the payment order in terms of the name on the order is really being made to Comsoc; it is not being made to the spouse, if you get my meaning. The order in court would be made to the spouse, but the payment of the order, because Comsoc is paying the mother and children, could be made so that on the support deduction order it would be made payable to Comsoc. Would that satisfy your concern?

**Ms Kotarski:** I think it does partially, in that she would not be losing any money.

**Ms S. Murdock:** And he would not know where she was.

**Ms Kotarski:** If you could arrange for the confidentiality of that.

**Ms S. Murdock:** As you were speaking, the thought came to me that then it is even more enforced, that she is not doing it.

**Ms Kotarski:** That is true, but often men ignore that notion that it is not her. The other part we were concerned

about with that legislation was that there seemed to be two different things happening, one for women who were not on GWA and one for women who were, and that seemed to be contradictory. We were just concerned that poor women will just be penalized one more step and not have some choices to make, and that was our concern there, that it seemed to be discriminating against poor people.

**Ms Duggan:** To add to this and pick up on something you were talking about, as you said, this is something that happened in Sudbury, and what we see across the province are discretionary things happening from area to area, office to office, worker to worker. I think that is the real difficulty with your suggestion. There is so much discretion and they have so much power. Then what happens if there is a problem? What mechanisms are in place to deal with that if that is the case?

**Ms S. Murdock:** Yes. I know Comsoc makes it mandatory for you to proceed on a support order; you do not have any option. If you want benefits from Comsoc, you proceed whether you like it or not, no matter how frightened you are. There does not seem to be much leeway there, so that is another area probably we can look at. Thank you.

**The Chair:** We are out of time. Thank you very much, Ms Duggan.

**Ms Duggan:** We would like to thank you very much for giving us the time to present.

SHIRLEY SUNDBERG

**The Chair:** Could Shirley Sundberg please come forward? Mrs Sundberg, typically for an individual there are some 15 minutes of time for presentation. I am sure the clerk told you about that. You have that full time, possibly a few minutes more or less, to use as you wish, to fill with your presentation or to simply make a few brief statements and allow for questions. Please proceed when you are comfortable.

**Mrs Sundberg:** I would like to thank the committee for this opportunity to speak on the amendment of Bill 17. First, I will give you some background that I personally have on the subject of child support.

In 1969 I was a deserted wife, left with a three-month-old baby and a month pregnant with our second child. Later there was a court hearing, and a court order for child support was awarded for \$35 per week for the two children. Attempts to collect this proved to be futile even after numerous show-cause hearings were held. I was then forced to seek government assistance as my wages were not enough to support us, and arrears for child support mounted through the years to a total of \$16,000 owed to the government. Seasonal work was the excuse mainly used for defaulting on these payments.

Difficulties I faced trying to collect child support were: having to locate the other parent to serve court papers; complaints of seasonal work; arrears mounting for many years; cheques sent that were late, NSF, unsigned, wrong year, and being sent from out of town they were held 10 days at the bank; lawyers' fees were paid for liens on

properties and the liens were not paid when the properties were sold; fees then were paid to garnishee wages.

Today my court order is registered with the support and custody enforcement branch.

To summarize the outcome, collecting child support is very time-consuming and costly. It is called child support, but the children have no say in the outcome and often become a pawn in the court battle or battles. To deduct these payments from the paycheques would eliminate many problems.

My recommendations for this bill are: This bill will decrease arrears owed and mounting up, plus save court time. It will decrease tardiness in receiving the payment and be more consistent. It will define if a job is truly seasonal and for how long. Children of a first marriage or relationship will have priority for the first time. It will decrease persons shirking their responsibilities by moving or remarrying. This bill may decrease the number of women forced to seek government assistance. Non-payment will no longer be a tool used as another form of abuse. By taking the payment out of the paycheque this will take the control away from the abuser. Finally, children will not be denied the necessities of life or the extras they should have because the cheque is in the mail and usually does not arrive.

**Mrs Cunningham:** Thank you for having the courage to come before this committee and tell your story. We appreciate it. And thank you for assisting us in some of our deliberations. I am not sure, given what you have described, that you would ever have any confidence in any dads after—

**Mrs Sundberg:** I am remarried.

**Mrs Cunningham:** Are you? So you do?

**Mrs Sundberg:** Yes.

**Mrs Cunningham:** That is great.

**Mrs Sundberg:** I was on my own for 10 years, though, the first 10 years when my children were growing up.

**Mrs Cunningham:** It sounds like a fairly happy ending for you and your children, anyway.

**Mrs Sundberg:** Yes.

1450

**Mrs Cunningham:** That is great. We are thinking that there probably is another sector of society here that maybe made the payments. One of the deliberations and concerns of the committee, or concerns during the deliberations, has been that some of the witnesses have told us they do pay support and have paid support and do not like the idea of their wages having to be garnished or this having to be paid out of their paycheques. They feel it is an invasion of privacy and unnecessary bureaucracy. I wonder if you have any thoughts on that, even given what you have been through.

**Mrs Sundberg:** I feel with unless it is mandatory, no, there are still going to be problems with collecting support. If they realize it is mandatory when going to court and the order is established, then I think it will be straightforward from there. There are no surprises after it comes straight



out of the paycheque. Then you are not having to worry about finding out where they are living, where they are working and starting all over again in trying to get that order enforced.

**Mrs Cunningham:** You would still have to pretty well know where they live, though, and where they are working, because you would not know if anything had changed and whether there had been voluntary information given on their part, either because of a change of job or perhaps an increase in their wages. That would be part of the order, would it not? They would have to have their name and address on it.

**Mrs Sundberg:** I think so.

It is difficult, though, when arrears mount up. As in my case with the arrears mounting up to \$16,000, my ex-husband at that time—he is working at the same job he worked at in 1969. He could not pay child support for 10 years, but he is able to support three new children and a wife on the same job. It was only after 10 years that mother's allowance wrote \$16,000 off because of his complaints, "I cannot pay it." I think when it gets to that point, though, that is a lot of money and I think that is where you see the write-offs, and if the women are doing their part by going to court and trying to get these arrears, I think the government and the rest can do theirs too.

**Mrs Cunningham:** Your view basically is that you have not had a lot of experience with people who do pay up, so my question probably is not as relevant for yourself, but I do appreciate what you have told us.

**Mr Mills:** I would like to make just a comment about this. My thrust was the previous person who was here and I have missed that. I would just like to say how glad I am that you have come here today and to listen to you. I live myself quite near Lindsay and I realize the tremendous effort it is to drive down here to explain to this committee your feelings of this, even though now you are now out of the bind that you were in, and you are, so to speak, living happily ever after. I think it says a lot to the government and its bill that you took the time out from your life to come here and endorse what we are trying to do, and I appreciate that and thank you.

**Mrs Sundberg:** Thank you.

**Mr Elston:** A couple of short questions: You were here for the last couple of presenters, so you heard some of our discussion. In terms of the issue, you have expressed your preference in terms of the mandatory nature of the order. You obviously have gone through practically a situation where somebody might come and say: "Waive this order being mandatory. Write a letter of consent." What is your feeling of having that avenue open? Are you a supporter of it or do you have any opinion? You are free not to have an opinion. I just felt that maybe you might be able to think about a person in real life having to consider somebody coming to her and saying, "I do not want to be enrolled in this."

**Mrs Sundberg:** Do you mean harassed?

**Mr Elston:** Perhaps, yes.

**Mrs Sundberg:** My situation was an abusive one too. I am on a board today and we are establishing a shelter in Lindsay. I think it is just going through shortly. So I have been involved with groups in that area too. I feel if it is mandatory, then it is just like having the police lay the charges now. The wife does not have to do it or the partner, or the woman, and that responsibility is taken away from them.

**Mr Elston:** But with the opting-out clauses, there are two particular provisions that could be used: One is consent, where the two parties consent, and it is that issue I would like your views on because it takes two under the circumstances of the second opting out. The other one is that the judge finds it unconscionable to register the support deduction order or at least to issue it. Have you any views on the fact that a person could be asked by the other partner to consent?

**Mrs Sundberg:** What you mean is so it will not be taken out of their paycheque?

**Mr Elston:** That is right.

**Mrs Sundberg:** I think if it is agreeable and there is no harassment or anything like that, if the person is willing to pay, yes, but just how far are you going to let it go if it slips into arrears? I think that is another area you have to look at, and then it does take longer to enforce again.

#### BERT FLARITY

**The Chair:** Could we hear from Bert Flarity, please.

**Mr Flarity:** You will have to excuse me. I just came here directly from work.

**The Chair:** You have attended a couple of these. Basically there is 15 minutes time. Divide that time as you wish, Mr Flarity, but it is still your time, so please feel free to go ahead as soon as you are comfortable. Pour yourself a glass of water if there is a glass there.

**Mr Sorbara:** Or just drink it out of the jug.

**The Chair:** It looks to me like the clerk is going to secure a glass of water for you, sir. Go ahead when you are comfortable.

**Mr Flarity:** You will have to excuse me, I am not really sure of parliamentary procedures and public speaking, but I will try to do my best

Interjection.

**Mr Flarity:** Well, I am in the same boat then. I brought in some copies, just a few briefs. I sat here and I listened to a few people, how they made comments of abuse and went many years of going without support. I would just like to stress the fact that I did pay support for my children over a period of years when I was separated until, as you can see in point one, I got financial strain versus financial gain.

If you do not mind me using layman's terms, my ex-wife is living with the gentleman she left me for way back when. They are doing quite well for themselves, own the house I once bought, own a house that they bought together, own a condominium, rent out their basement. They are doing quite well.

I have been remarried since then and am raising more children and finding it a little tough. I kept paying my support faithfully. It was not until about three or four months ago, I guess now, that I put a stop to it because I had a phone call from the fellow saying he wants to adopt my children. Being the human that I am, I am saying no. He says the only way he will stop me from having to pay child support and take it to court so I can get off of it is for me give them the right to adopt my children.

Of course, I just said, "Forget it." Then I find out about the fact of them owning the house and the condominium and doing quite well, which I do not knock them for, all the power to them. But I said that my child support was not going towards my children. It is going towards their capital gain, so I refused to pay it. I abruptly stopped it at that point.

Then I found that when I first separated from my wife, I was going through the fact of paying my mortgage, paying the household bills, putting groceries towards the house, putting everything in while this fellow was living there scot-free. Their choice: I cannot argue about that, whatever way they want.

But I found it put me farther in the hole, which made the courts come after me, after the rulings in the courts that I paid child support. They garnisheed my wages when I once worked for the government and I was in arrears and I had to pay. I had to live off \$150 a month at that time, which I found very strenuous. I finally got it all caught up. I finally paid whatever had to be paid until, like I say, three or four months ago, and then I brought it to a stop again.

I find now, if I may say so, that if you pass the law of Bill 17, it only forces me—you have three categories of workers. You have your white collar, you have your blue collar and you have people like myself who work in construction. If they go through and pass the law of Bill 17 and they garnishee your wages, I can be replaced in a minute and I will be out of work.

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My wife now, due to personal reasons, is unable to work, so if you put me out of work, as well you leave no choice but to put another family on welfare. Which way do you look at it, people keep getting ahead by my wages being garnisheed or other people going to the government for assistance? I am here to say I really do not know what it is all about. I would like to find out and see what kind of assistance the people who are being pressured can have, as well as the people who are doing quite well—no disrespect to women who have been hurt over the years, with children.

I have really no more to say.

**Mr Elston:** The interesting problem is this, just for your benefit, you know that this will mean there will be at-source deduction. Your paycheque will be deducted, just to advise you a little bit about what this bill is about, the idea being that pursuit of other remedies has caused a lot of consumption of resources by, actually, both former members of the marriage, of the union. This is seen as a better, quicker way of dealing with support payments and in fact probably one that removes the need to be always

going back to a forum where you come face to face with the difficulties.

My concern is this: were you in a position where there could have been a consent, for instance, between you and your spouse that this not be done at source, at one time?

**Mr Flarity:** Are you talking about the support payment itself?

**Mr Elston:** Yes. You paid all the time?

**Mr Flarity:** Yes. I paid it right through. It has been four years actually. My lawyer versus her lawyer had an agreement outside of court as to what I should pay each month, and when that came to agreement I started paying my payments, and like I say, I was in arrears until the court settlement and I had it all paid up. We had no dispute on that until I found out that my money was not going towards raising my children; it was going to their profits on buying real estate and I said: "That's enough. I'm not going to do it any more." I only felt it was fair. If my kids were getting the money, I had no problem with paying.

**Mr Elston:** The consideration in your mind is that the children are not receiving the money.

**Mr Flarity:** My children are not suffering. My children, if you have to know my family history background, are doing quite well for themselves. They probably have more money in the bank than I have. They will never suffer, from my side as well as her side, but the money that is going in, it is not like saying the children need clothing, the children need groceries, nothing like that. It is just money that is going to profit them; that is all it is. So like I say, it is not the lack of interest in the children, by no means.

**Mr Elston:** Can I ask, you now have a family of three that you are supporting?

**Mr Flarity:** I have three children from my ex-wife and two with the new wife.

**Mr Elston:** So there are five altogether.

**Mr Flarity:** Five in total, yes.

**Mr Elston:** You are supporting them on a construction worker's wage?

**Mr Flarity:** Yes, I am. I make a good salary, but I am an apprentice right now and I have to finish my term as an apprentice due to the late start in life. I have trade school to go to. Then you go on unemployment. You are no longer being paid every week, which is another strain, but that is my benefit, to better myself in life, to get ahead. I knew all these agreements. When I started paying support, I knew I had to start going to school. I knew I was going to go on unemployment. But I paid it anyway. I struggled one way or another and made the payments, until I found out what actually was happening and then I brought it to a stop.

**Mr Elston:** Had you thought of actually applying to have your order varied, rather than just stopping the payments?

**Mr Flarity:** How do you mean?

**Mr Elston:** Go back to court and say, "Reduce the payments."



**Mr Flarity:** Yes, I spoke to a lawyer personally and I asked him about taking it to court, either to lessen the payments or stop the payments or arrange something where I could start paying later on in life, and his words, more or less, were "You don't have a chance. We will fight it gladly"—pay him whatever he wants and if I lose, I will.

**Mr Elston:** That was my next question. Did he ask for a retainer?

**Mr Flarity:** Yes, exactly, of course. I would not be able to go under—what do they call it?

**Mr Elston:** Legal aid.

**Mr Flarity:** I work so I would have to pay.

**Mr Elston:** So you really find the system totally frustrating for you at the moment.

**Mr Flarity:** Oh, yes.

**Mr Elston:** Is there any issue at stake with respect to access or any of those others?

**Mr Flarity:** Access in which way—of seeing the children?

**Mr Elston:** Seeing the children.

**Mr Flarity:** I have the right to see the children one night through the week and every second weekend.

**Mr Elston:** So everything really, until about three months ago, was moving as well as can be expected when you go through a family breakup. I am not saying that it is easy, but you had really mutually made arrangements that were working and that you had maintained in a good manner.

**Mr Flarity:** I did not insist on seeing my children, nor did I follow through with their once-a-week type of thing, or every second weekend. I worked around her schedule, my ex-wife's schedule, where my children were in hockey or whatever the case may be and that was not a good night, so we did not argue over the fact, even though it was in writing, "You have this night and this weekend," type of thing.

We had a mutual agreement, although every time I went to pick the children up my ex-wife had a mouthful to say to me and the children always said: "What's the matter with Mommy? Why is she always mad when she sees you?" That is where I started feeling the pressure. Every time I picked my children up I was putting strain on them. Every time Daddy is around, there is going to be a fight at home. I could see mentally it was bothering them, so I kind of slipped away from the once every two weeks, to maybe once a month type of thing and slowed it down a bit.

Then I started thinking that was what my wife wanted. My ex-wife wanted me to do this so I started picking them up again and then it slacked off again and there was just no schedule to follow, so to speak. It was just there whenever it happened, so to speak, in seeing them, but she never really denied me the right to see my children.

**Mr Elston:** Do you think this bill will affect the current status of your relationship?

**Mr Flarity:** My livelihood, definitely, guaranteed.

**Mr Sorbara:** Let me just say, first of all, Mr Flarity, that you are as competent a witness as any we have had here at the committee and if you ever want to come and testify about some other bill you should feel comfortable and welcome to do so.

The one question that I had was about a comment that you made at the end of your remarks, and that is that there were three type of employees, if I recall, and you suggested that if this bill goes through you would not be working. Are you suggesting that you and other workers you know, if their salaries are going to be automatically attached in this way, will quit their jobs or it will not be worth it to work or what? What were you getting at there?

**Mr Flarity:** If I may, white-collar worker, I am not sure about; I have never had an office job. I have had a government job, which I considered blue-collar. I worked for the Scarborough school board for many years. When my wages were garnisheed at that time because I was in arrears with my child support, they agree to pay it and it just automatically came off my pay. But now, what I say, there is the third breed of workers, construction workers, where companies have in my field—I am a plumber—so many guys who are waiting to come in and take that job, that if you phoned up my company and said "We now have this person on record. We'd like to garnishee his wages," one way or another I will be out of a job within a week and somebody else will be in to take my place, even though it might be law.

**Mr Sorbara:** Even though it might be against the law?

**Mr Flarity:** Sure, and you know yourself, if you try to fight the system, saying, "Hey, I think they just laid me off or fired me because they garnisheed my wages," you would have no way of proving it.

**Mr Sorbara:** That is exactly the argument that the incumbent Minister of Labour (Mr Mackenzie) used in respect of the provision that is in this bill, when he said those sorts of provisions are not worth the powder to blow them to hell. The minister has just put that same sort of provision in this bill. I would encourage his governmental and parliamentary colleagues to talk to him about that, because at least in the view of the current Minister of Labour, Mr Flarity is absolutely right. The automatic deduction order comes in and suddenly an employee finds he has fewer hours or he has bad hours or he has no hours at all. That is the result the Minister of Labour said would result with this sort of provision in Bill 124 and now he has put it in Bill 17. I think we have something to worry about there and I think testimony—

**Mr Flarity:** Pardon me. Excuse my saying so, but there also is the fact that if due to whatever reason my health does not hold out and I come down with the flu or pneumonia or whatever and I am off for any period of time, a day, a week, two weeks, I am automatically not paid. In construction they do not have sick days like government jobs and stuff like that. Now what happens if my wages are garnisheed and I am not at work due to health? They cannot take it out of my company if it is not there.

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**Mr Sorbara:** I think, as I understand it, and the officials will correct me if I am wrong, that you are in arrears, but if and when you start being paid again the same deductions are made as were made before.

**Mr Flarity:** But there were no deductions, only the fact of being in arrears.

**Mr Sorbara:** The regular deductions: under this new bill, so long as you are being paid, an amount must be deducted in respect of the support payment. If you are not being paid, if you are laid off or if there is no work on a particular week or if you are sick, you just fall into arrears.

**Mr Flarity:** You keep going into arrears.

**Mr Sorbara:** Yes, you keep going into arrears.

**Mr Flarity:** Which is kind of sad, is it not?

**Mr Sorbara:** Yes, I guess it is.

**Mrs Cunningham:** Good point. It is kind of sad. People who have been here before, both employers who are responsible for administering payrolls and human resource people who advise—in fact a full-time human resource person from Dofasco was here and when we asked her why people were not paying what they should be paying, she said because they did not basically have the money. When we asked what the record was on what would happen, she did agree that many would not work, they would just quit.

Maybe it is what I get in my constituency office and some of my colleagues, but those are the stories that we hear a lot about, unfortunately. What we really had hoped to do was to talk about how we can make things better. I have before me a letter describing the SCOE office in one of our municipalities in southwest Ontario, which will not be named, but the Chairman has the letter as well.

**Mr Sorbara:** Is it London?

**Mrs Cunningham:** Actually, it is not. You would not get that from my office.

**Mr Sorbara:** Windsor?

**Mr Elston:** Sarnia.

**Mrs Cunningham:** It is in your package as well.

**Mr Elston:** Why are you so secretive?

**Mrs Cunningham:** It is from Thamesville.

**Mr Elston:** Oh, from Thamesville.

**Mrs Cunningham:** You know, there are little tests in here to see if some people are awake, so it works. Did you have to deal with the SCOE office at all?

**Mr Flarity:** Yes.

**Mrs Cunningham:** Were you fairly happy with how it worked? This is not a leading question, but I am wondering if this is more the norm, the complaints that we have here.

**Mr Flarity:** I would say, yes, I was very happy at the time, due to the fact that I agreed on everything that should be done until it came to the fact—I keep repeating myself—of their gain. Then I disagreed with everything. But, yes, I agreed with SCOE at the time.

**Mrs Cunningham:** So the SCOE office was helpful in collecting from you—not from your employer but from you—the amount of money that was necessary to send on to your family?

**Mr Flarity:** When I worked the government job, I had my wages garnisheed, as I said, and it continued that way until I quit the school board. Then I went out in the construction to finish my apprenticeship, to get my trade. When I did that, automatically it stopped the garnishee on my wages with the school board.

But because I was out in construction, they said to us, “If you send us 12 post-dated cheques and guarantee the money is there every month, it’ll be all right.” So that is the way I did it. I sent them 12 post-dated cheques, made sure the money was in the bank every month, until something like three or four months ago, and then I just stopped it.

So we had all agreement to everything. I spoke to some lady on the phone—I could not remember her name—she was quite helpful and kept telling me what I should do and how to arrange it and all that. I had no problem with it.

**Mrs Cunningham:** You happen to be one of the people who would not necessarily have to have your wages garnisheed or a deduction from your wages, because you had the arrangement with the office and it worked. You are also somebody who has seasonal employment, or you could be somebody, I suppose, who was self-employed—

**Mr Flarity:** Very much so, yes.

**Mrs Cunningham:** —so finding the jobs to earn the money on your own. The last statement you made before the questioning began, the same one that Mr Sorbara was talking about, is that you could in fact find yourself unemployed.

**Mr Flarity:** Instantly. No question in my mind.

**Mrs Cunningham:** It is interesting to hear you say that. I happen to share your views. Mr Elston then pursued it—I think he did—it might have been Sorbara.

**Mr Elston:** We all look alike.

**Mr Sorbara:** We are all the same.

**Mrs Cunningham:** Did you hear that, Mr Chairman?

You are actually one of the more articulate members in this room today, so never be ashamed of coming and speaking.

**Mr Flarity:** No, I have no shame.

**Mrs Cunningham:** So many people are being nervous about it. So many people like yourself would love to have your courage.

**Mr Flarity:** Who should be nervous? It is fact. It is life.

**Mrs Cunningham:** It is great to see you here, because you are talking about the real world, and in my work in politics I only get it at my constituency office. I often do not get it in this building, I must tell you that. So I will say that we are very concerned and I am glad to hear you say that this 39L, which is the part that says, “No employer or person acting on behalf of an employer shall”—and this is to somebody who is required because of a court order or



garnishment to pay to a third party any amount owing, so this is the garnishee. They cannot dismiss or threaten to dismiss an employee—this is the business. This is this law that we are looking at now.

**Mr Flarity:** It does not mean anything.

**Mrs Cunningham:** They cannot discipline or suspend an employee, they cannot impose any penalty on an employee and they cannot intimidate or coerce an employee.

**Mr Flarity:** This is true, but when the building is finished, they can lay him off and not rehire him. The job I am on right now is just up the street. I am building an 18-storey building, to be completed in July. Now if this bill gets passed and my wages get garnisheed, come July I am laid off. Who else is going to look at it? "This guy is going to come to us and we have to put a garnishee on his wages."

**Mrs Cunningham:** One more thing for them to do, right?

**Mr Flarity:** Exactly.

**The Vice-Chair:** With the committee's indulgence, I did not notice any members from the government side with their hands up to ask a question, but there is somebody. Mrs Mathysen, please.

**Mrs Mathysen:** I would like to thank you for coming, sir. I wonder, have you returned to the court to have the financial situation of your ex-spouse and you reviewed? The support that you are paying is onerous. Have you taken steps to have it reviewed?

**Mr Flarity:** Let me see if I can clarify myself. The amount I was paying I had no disagreement with and I would gladly keep paying it. What I did not like was the fact is they were using my money for their gain. It was not my money to raise my children.

**Mrs Mathysen:** But what I mean is, if they are in a better financial situation than you, could you have it reviewed? You also indicated that you had some difficulties in your current situation. I wondered if you had taken steps to have it reviewed so that you did not have to suffer unduly.

**Mr Flarity:** Like I made a point of, when I had to go to trade school—and it is coming up again, I will have to go again—I struggled and I did what I had to do to make the payments because I was afraid of getting called into court and because I was in arrears, I was going to end up getting bumped up and she would fight me for more money and every horror story you can possibly hear, and I am sure you have heard them all in here. So I just kept doing what I had to do until the anger hit. So, to answer your question, no, I did not go to see about changing it at all. I just did what I had to do to pay it.

**Mr Mills:** I appreciate your being here and putting a new perspective on this issue, which I must honestly say I had not really thought of or examined. However, having said that, I would imagine that Statistics Canada or somebody comes out with a figure that would designate child support for a child.

**Mr Flarity:** Yes.

**Mr Mills:** Now, your perception I understand is, "They've got a lot of money and they don't need mine," but I feel, nevertheless, that the children are yours. You have had the opportunity and you do not want them adopted, thereby relieving you of the financial obligation, notwithstanding the fact that if they were adopted, you could get a court injunction to still permit you visitation. Just because they are adopted does not mean you never see them again. I do not know if you know that.

So I have difficulty in you saying, "Well, they've got a condominium, they've got this, they've got that," when the bottom line is that the support is for the children and their lifestyle, although you may disagree with it and think that they are doing great. Does the compensation for the children meet their needs or do you think it is excessive? I say to you, sir, if you think it is excessive, then you should go back to the courts and get it changed. But just because they are doing good, I do not see—

**Mr Flarity:** Again, like I say, I have no disrespect to them doing quite well in life, all power to them, and I am glad to see it because my children live under that roof. So go for it, buy Canada if you can do it. What I am actually saying is that the money I was giving to them each month did not go to my children for clothing or for bicycles or for whatever you buy for kids out of support money, it did not go to any of that, it just went to their capital gain.

**Mr Mills:** How do you know that?

**Mr Flarity:** They admitted it to me openly. They asked for the adoption of my children and they were explaining to me why they wanted to adopt my children and take my name right off the paper. They got me to the point financially I was hurting so bad that I almost said yes, until I said, "Forget it." It is not the fact of the money any more, it is not the fact of my children versus his wanting to be the new daddy or anything. It was the fact they wanted to put me down and they were doing a good job of doing it, and I just said: "Forget it. I've had it."

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**Mr Mills:** Just one final question, to help me adjust and come to grips with all the things that we have got to think of when we come to this bill and finalizing it. Are the payments that you are making for your children commensurate with the upkeep of the children, notwithstanding the fact they have got all the rest?

**Mr Flarity:** Well, let me ask you if—I do not know if I am running out of time. I am starting to feel like the time is coming near.

**Mr Mills:** No, no. We have got a lenient Chairman.

**Mr Flarity:** Well, let me ask you a question. Let me kind of throw something back, and I will be open. I was paying \$600 a month for three children. Everybody tells me: "That is fantastic. You got off easy." You tell me where three little children spend \$600 a month. That I do not know.

I also understand there was a law passed—who knows when? I do not follow it all—that if another man is living with your wife and has all kinds of money and whatever, that is not to be taken into consideration; it is still your

wife and your children. So somebody should be able to live off of somebody's financial strain or burden or whatever you want to call it. I do not see it. I do not know, but I would argue it right to the end.

**Mr Mills:** I guess it is one's perception. Thank you for coming.

**The Vice-Chair:** Mr Carr, if you can make really brief, I would appreciate it.

**Mr Carr:** I will try. Thank you, Mr Chair, for including me in. I want to thank you as well. It is sad; it seems there are threats on both sides and we see both sides of it here each day. I thank you for coming in.

The question I had relates to going back, and I think you mentioned that you went to see a lawyer about going back and he was going to charge you a lot of money. We heard earlier from a gentleman who said it might take up to a year to do that anyway, and I was just wondering if the lawyer advised you because you would not win or it was going to be a long time or it would cost you a lot, what his reasoning was to say: "Forget it. Don't even bother with it."

**Mr Flarity:** The lawyer's exact words were: "This could take anywhere from a year to two years. We have to get her back in court. She has the right to have a lawyer, and it is going to cost X dollars, but your chances of winning are next to none." But he said, "That chance could be there that you could win."

**Mr Carr:** So he said a year to two years.

**Mr Flarity:** Yes.

**Mr Carr:** Because we had a lady representative from one of the groups who said it might take up to that but it would be a lot less. But your lawyer said one to two years.

**Mr Flarity:** Exactly. He said, with the courts being so full now, he would not even manage to be able to get in within the next six months, anywhere from a year to two years.

**Mr Carr:** Plus you probably would have lost and the only one who would have gained would have been the lawyer.

**Mr Flarity:** Exactly, and he did to begin with.

**The Vice-Chair:** Thank you very much, Mr Flarity, for coming. Never be afraid to come before these hearings. You are what this is all about.

**Mr Flarity:** Thank you for hearing me.

**Mr Elston:** Mr Chair, could I ask just a point of clarification either from the staff or from the PA?

**The Vice-Chair:** Sure.

**Mr Elston:** It has to do with the sick days or at least the loss of work through sickness for a person like Mr Flarity, or indeed in construction rain days, which means if you have five or six days in a row when it is too inclement to operate, is there an obligation for the employer to advise of an interruption? So every time there is a rain day or an extended sick time, they would have to, in Mr Flarity's situation, within 10 days advise SCOE. Is that not pretty onerous, particularly for construction people?

**Mr Wessinger:** I will ask staff to answer that.

**Ms Pilcow:** Chances are that people in construction are not going to be considered to be income sources, people who are not paid a regular wage, so not all of them are going to be caught.

**Mr Elston:** Mr Flarity gets a wage every two weeks or whenever he is paid.

**Mr Flarity:** Every week.

**Mr Elston:** Every week he gets paid, so it would be an income source. He will be employed by an employer. I suspect he is a member of a pool or of a union list or whatever and gets called, so if he is off for two weeks because of illness, his employer would have to advise SCOE that he was ill or else his employer would be in breach and subject—

**Ms Pilcow:** They would have to advise that there was an interruption. If there was no payment coming, they would have to advise that there was no payment and why there was no payment coming. What they could do is, with the last payment they get sent in—and what we propose to do is to give them a form that they could fill out to say, "We're not going to pay this payment because there is none coming."

**Mr Elston:** What about the situation where there may be a partial—for instance, if Mr Flarity worked for two days or was ill three or there were three days of rain on the construction site and they were closed down, would they still have to advise of an interruption or is that an interruption for the two days?

**Ms Pilcow:** That is not an interruption.

**Mr Elston:** So there would be something coming.

**Mr Wessinger:** Yes. I think it is only if there is an interruption of pay, not an interruption of work.

**Mr Elston:** Okay. So it is just if there is a nil file by the employer.

**Ms Pilcow:** No payment. An interruption of payments, meaning no payment.

**Mr Elston:** Okay. Thanks.

**The Vice-Chair:** Mrs Cunningham, one brief question, please.

**Mrs Cunningham:** If you do not mind, Mr Chairman, I think one of the problems in sitting in committee sometimes is that we are listening to things that could be clarified for witnesses and yet there is never any opportunity to do that.

**The Vice-Chair:** You are correct.

**Mrs Cunningham:** I think that is something that we should be thinking about in committees, because people leave here with misinformation and it makes us all look bad, I think. We should take the time, even if it comes from the Chair, interject and say, "Look, I would like to clarify that," or give somebody an opportunity because it is really not good for us. It is just a good thing that we are not being televised right now, that is all I can say, and it is not because I do not like the way the committee is going. I do.

But on the same point, Mr Chairman, in this case of Mr Flarity, when he was paying himself and sending his



cheques in to the SCOE office, even when he was not employed, he still somehow found a way to pay his family. One of the problems with this legislation really truly is that the person who is willing to pay up under all kinds of circumstances will not be allowed to. That is a real downside.

My question is this: In that same letter that I was quoting from which was sent to the Chair and members of this committee, the Windsor office does not allow this post-dating of cheques. I think we have got an administrative problem here. Why would one office allow it and another office not allow it?

**The Vice-Chair:** I will let the PA answer that.

**Mr Wessinger:** I think we have got a misconception here. When I listened to the evidence of the witness, the evidence was that, first of all, he made his payments through garnishment. He was garnished, which means he was in arrears, which he was not paying voluntarily. Second, he did make 12 payments when SCOE first came in but then he stopped them, so he stopped making his payments voluntarily. In my opinion, this witness showed the very reason why we need this legislation.

**The Vice-Chair:** Okay. Can we move on?

**Mrs Cunningham:** No.

**Mr Elston:** Mr Chair, just in fairness to the witness, I know that sometimes people talk about garnishments—he maybe did have them take the money from his cheque. I am not sure exactly whether it was a garnishment. I know he used the term “garnishment,” but in fairness to him, he had paid up his arrears when the order first came down, and I am not sure you are being quite fair. It may be that you are absolutely right with respect to his last three or four months—

**Mr Wessinger:** The last payment, he clearly—

**Mr Elston:** —but I think that is unfair to say that he was only paying through the school board because of a garnishment because I am not sure that is exactly—

**Mr Wessinger:** It is taken from his own words.

**Mr Elston:** Yes, but that is not quite fair.

**The Vice-Chair:** Mrs Cunningham, go ahead. I am sorry. You had the floor.

**Mrs Cunningham:** Just to give the other side of the story, even when he could not work he was paying, so the statement is unfair. We have got problems on both sides, and I think our position here is to take a look at how we can best come up with some meaningful legislation. I think you have to give credit where credit is due, and credit is due there, so that part of the system is working.

My question was: Why was it allowed in one office that you could send in your post-dated cheques—and as a representative of the public, I do not think we should be charging them any money when we have got a system that works well. Why can they do it in one office and not another? Is this an administrative problem that has been drawn to the attention of the government?

**Mr Wessinger:** I might just clarify this. There is no question the witness had paid up at the time he paid in the post-dated cheques, so I think that is the practice.

**The Vice-Chair:** Ms Murdock, please.

**Mrs Cunningham:** But I did not get my question answered. Why one office and not the other?

Interjections.

**The Vice-Chair:** Ms Murdock.

**Ms S. Murdock:** There are two points because Mr Flarity said that he was garnished during the period he was working for the board and that, when he left the board to continue his apprenticeship, he made an arrangement with SCOE to pay by post-dated cheques and they were the ones who suggested that. I know that procedure is used in Sudbury as well.

**Mrs Cunningham:** He is going to be happy with this, and if he is not, I think he should be called back to the mike.

**Ms S. Murdock:** Yes. That procedure, by the way, is used for post-dated cheques in Sudbury as well. It is interesting to note too that SCOE, a horrendous example, as far I am concerned—one of the many, I mean there are so many—but the one that really killed me was say the court had ordered the 15th of the month as the date for payment and the post-dated cheques that were sent in—in one instance in a case that I had, the cheque was dated the 16th and SCOE actually had the audacity to send that cheque back as unacceptable and yet never processed it till the 21st. Just incomprehensible administration. I agree with Dianne that in many instances the administration aspects of the SCOE system are very, very bad, and hopefully Bill 17 will administratively correct some of that. It is the same thing with the Comsoc deductions; we made arrangements with the Comsoc office locally, yet it was not being done in other areas. There has to be a lot more co-ordination and information.

1530

**The Vice-Chair:** Thank you, Ms Murdock. Mr Sorbara, if you can really make it brief—

**Mr Sorbara:** I will make it brief, but I do note that we are right on time and we are going to be hearing from Mrs Lusher and the Heritage of Children of Canada almost right on time.

I wanted to take some slight exception to the remarks of the parliamentary assistant, who referred to the testimony of the last witness, Mr Flarity, and said, if I can paraphrase your remarks, “It’s his testimony that confirms me in the view that we need this bill.”

I think that is an unfortunate comment. The fact is, we are going to get this bill. All members of the House voted in favour of it on second reading. Our job here is to listen carefully to the witnesses to see how we might fine-tune this bill. If the Ministry of the Attorney General can get over its rhetoric about child poverty and its rhetoric about justice and acknowledge that this is a bill to make SCOE work more effectively and save tax dollars and save social assistance dollars, and if we can listen to a man like Mr Flarity, who says, “The prohibition against employers firing as a result of an automatic deduction order is not worth the powder to blow it to hell”—when he says that, he is quoting the now Minister of Labour—then we could learn

something from these committee hearings and maybe fine-tune the bill and discharge our responsibility.

Mr Flarity's testimony did not confirm me in the fact that we need the bill—we are going to have the bill—but that we need to do some fine-tuning of it. And I would recommend some greater flexibility to keep people out who do not need to be in.

#### HERITAGE OF CHILDREN OF CANADA

**The Vice-Chair:** Our next presenter is the Heritage of Children of Canada. Welcome. You have a half-hour. You can use that any way you want.

**Mrs Lusher:** I am not new to this. I have made plenty of presentations which the other government knows about. After five years I think I have some experience. I have been sitting in at the Legislature for the past five years; some of the members are not even here that long.

**Mr Sorbara:** I think there is a standing order which says we cannot sit unless you are here.

**Mrs Lusher:** I do not get paid for my time. I get nothing for it. As a matter of fact, it costs me to come here.

**Mr Sorbara:** We are delighted to have you.

**Mrs Lusher:** I will let you know what is really happening. It has to do with Bill 17 as far as support goes; we know that. But it also has to do with custody. It is a very, very big issue and we all need it.

I am the founder of the organization the Heritage of Children of Canada. We are very concerned about what is happening in this wonderful country. Ontario is looked upon by all other provinces as a role model. Bill 17 deals with support and custody; the main issue in the bill is the support for children. This is important, but what about custody or even access to the children?

The families that are divorced or separated put a demand on fathers' obligation for support. Many of these fathers pay the support and are denied access to their children. Many are labelled abusers and molesters by the mothers or the girlfriends. The courts and the lawyers go along with these allegations. The children's aid and the official guardian's office who are assigned to many of these cases also go along with these allegations against the fathers. No court or lawyer should have the right to label anyone without absolute proof or investigation. If a slight doubt of abuse exists, access should be allowed, supervised access with a third party.

Why are the children deprived of their heritage? Why, when there are family problems, are the victims the children? Why is there not family counselling enforced to ensure the rights of children and their heritage? Mediation should be enforced by law. Many mothers will make excuses not to let the fathers see their kids, denying their rights even if they are making payments. Do you think this is a fair system? Fathers of these children have parents, grandparents of these children. They too are denied access to the children; the extended family, aunts, uncles, cousins and so on. The children get to know only one side of the family, the mother's side.

I would like to know: Were you people brought up this way? I know I was not. Are you doing this to your chil-

dren? Children must know their heritage. There are couples with children, not divorced or separated, and the husband is manipulated by the wife, who is the daughter-in-law, not to have anything to do with his extended family, so the children are denied their heritage as well. There are 95% of men in this category and 5% of women who are manipulated by their husbands doing the same thing to them.

Why are children the pawns? We need a law to protect the heritage of children. We all know that children need to be supported financially, but what about the human side? Do you not think children have rights? Why do you not take into account that many children are manipulated by their mother to believe their father does not care for them and does not love them? Children are born innocent and are very trusting, and if they do not see their father they will believe they are not loved by him and that he does not care for them. This has a psychological effect on the child. Why do you not think this can cause a problem for a child's future? What can Bill 17 do? Remedy the future of the children.

There are many mothers on welfare or family allowance. We understand the need for support payments, but what do you intend to do when the father pays and is denied access to his children? Many of the mothers have boyfriends and the children accept them as fathers and their real fathers cannot even see them. But the money is taken by the mothers. What happens when the mother and children move and this move makes it impossible for the father to see his kids, yet he must pay? What solution can you suggest to this situation? Children need both parents, grandparents and extended family members.

The Heritage of Children of Canada wants something done on this issue. Children have a need for love, emotional support, and a need to know their families on both sides, whether good, bad or indifferent. Many of these children wind up on Yonge Street and do not trust their elders because of what happened in their young lives. They become drug addicts, criminals and prostitutes. We know there are 15,000 of these kids on the streets in Toronto. Many of these children are dropouts from school, and no one cares. Some of these kids wind up in foster homes. They do not know their grandparents, who care for them, and have no knowledge of where they are. Also, the extended family is important to our children.

If fathers are denied access to their children, then why not give custody to the father and access to the mother? Everyone talks about these problems but no one does anything to remedy the problem.

Grandparents would like to play a part in their grandchildren's lives. Why is there no law for grandparents? We are fighting for the past five years, sitting in on the Legislature to get some recognition for grandparent's rights, to have the same right as the parent. Many of the Legislature members know us and know what we want done. We will not stop pursuing this right for grandparents and the heritage of our children.

There were standing committees in the last government, and many fathers, mothers and grandparents made



submissions, yet it was a waste of time and money and effort. Nothing was done to remedy the problem.

On 26 January 1991, a Saturday night, there was a TV show; the program was Isabel Bassett on channel 9 concerning drugs in the neighbourhood. It concerned mostly single parents and children. Is this the way we are going, a province where our children do not have a future? We must wake up now. We must care. Bring back the family value. The courts, the judges, the lawyers, all should be responsible for labelling and crucifying the public. There should be no immunity for them. Maybe things would change by using the truth.

1540

You know I have been there. I have been on many committees with Ian Scott, with John Sweeney, the human rights committee. I have made all these submissions. No one, not with a twinkle of an eye, puts any effort into helping the children, the grandparents who want them. They are put into foster homes.

We have a grandmother here, and, God bless her, she has a mother who is a great-grandmother. Her son is married like my son is married. They are not divorced but they are manipulated by their wives. They cannot see the children. Neither can I. I have been in the court for a long time. I only saw my grandson for half an hour when I was supposed to see him for an hour.

The court system stinks, I will tell you that now. Because you were told you have a psychologist, a psychiatrist, a social worker, and you are going to see the family singly, together and with the child, and it does not happen. Yet the social worker takes on all of that work. No psychiatrist, no psychologist, just the social worker who is just out of school and using me as a guinea pig to get her practice. She is the one telling me I cannot see him more than a half-hour. There was no communication with any of the family. If I were in a foreign country, I could understand it but, my God, I am living in Canada.

**Mr Carr:** I appreciate your emotion and passion in this. I was thinking we do not use the resources of grandparents enough in other areas, even when we do have them. One of the questions I have goes back to one of the questions I had before with the court situation. You tried to get it through the courts. Maybe you could explain what happened?

**Mrs Lusher:** I have a judgement on my back for \$4,350. The judge who was there did not even let my lawyer speak. He was with the other lawyer, the opposition lawyer, like this. Every time my lawyer wanted to say something—as a matter of fact, my lawyer was here on Bill 124, John Weingust, and he knows, and I can prove it with him, that the other lawyer was in cahoots with the judge—I reported him to Osgoode Hall; I am waiting to see if something is done—because after the trial, he asked the other lawyer, Paul Pellman, if there was anything else he wanted to put in the judgement and he would put it in against me. The judge put in the judgement that I had no right to make an application to come into court for access to see my grandchild. I was labelled in the court by this lawyer that I do fortune-telling, I do witchcraft—you

people know me over five years; I would not be here if I do that kind of stuff—and refused me to see my grandson.

I am only one. I have a lot of grandparents that have gone through the same thing. I have been in court with a lot of grandparents. I have been in court with another grandparent who lives up in Orillia. She is very sick; she would have been here. Her daughter-in-law took advantage of her son. They separated, they got divorced—had a little girl. This grandmother used to raise this little girl. She used to come in with all kinds of marks on her body. She did not know what it was. Her son was labelled an abuser and a molester. This young man had a very good job with CN, he was an engineer. He went so far down the tubes he had three nervous breakdowns. On the third breakdown he lost his life. He was one week short of 36 years. The little girl became a ward of the court. They would not let the grandmother have her while he was alive, because if the grandmother had her he would come to see his child, and he was labelled an abuser. He had no rights.

**Mr Carr:** Would this particular—

**Mrs Lusher:** Listen what happened to this thing. Just a second. We went back to court with her and the judge there did not want to take the responsibility, so he opened the case again, because the child was made a ward of the court and was put in a foster home. She was so mixed up she had to go on pills for psychiatry. They had to take her to a psychiatrist.

This grandmother is torn apart. She is very, very sick. The little girl is now 15 years old. When her father passed away she went to the funeral, and all she was thinking about is how much money and where she is going to go for a good time. I think that is a terrible thing to do, to tear up families.

And who did this? The children's aid society and the guardian's office. This is what work they are doing. We have to get them out. We have to redo the children's aid. We have to close up the guardians, because they are putting in children from school. They come out of school with their briefcase and they are going to be your social worker in the court, not even knowing what hurt it is and what these people are going through. I have had three of them, and the minute they see you, immediately it is no access.

**Mr Carr:** Would Bill 17, in your estimation, having—I am gathering now—spent a great deal of time on this and also Bill 124, make the access question more difficult or easier or what?

**Mrs Lusher:** This will make it more difficult. Even though fathers have to pay, they are not seeing their kids. Where is the access to this? You are just looking for money; money is the cure-all. You have human beings to contend with. You have people who are going to be the future of this country. You have 15,000 kids just on Yonge Street, not even the whole province. The whole province has over 100,000 kids roaming the streets.

I had a call the other day. I was on the Shirley show. I told the Attorney General he is going to get a tape to see that show. I had a call from Newfoundland the other day, which is not this province, and she has problems there. So

I told her: "Everyone is looking for Ontario. If we can do something in Ontario it is going to go all over the country."

**Mr Carr:** One last quick question. With the overall question of access, do you see access as being one of the major reasons that payments are not being made?

**Mrs Lusher:** That is right. That is one of the major reasons a lot of fathers are not paying. If I do not see my child, why should I pay? That is the answer. We had fathers on Bill 124, if you go back; Dianne, you remember. One father was crying here. He called his little girl—he has not seen her but he has been making payments—and he asked for her by name and she said, "That's me." He says to her, "I'm your real daddy." She says, "Which one?" That man was crying here. "Which one?" How many men has she got who this little girl knows as daddy?

We have another grandmother. Her son is a policeman in Metro Toronto. She is not here today. He has two children. He is divorced. He is a policeman and he pays \$1,100 a month and has not seen his two kids for almost four years. And if you think that is right, I do not know what kind of system you have here. But he is paying \$1,100 a month and she is always making excuses. This woman is living with another man. That other man has become daddy. This one is a bad daddy. They stay away from him.

**Mr Mills:** I would just like to speak. Support and access, as far as I am concerned, are not related issues, but I have a lot of empathy for what you are saying.

I like to think that this bill is being introduced for a number of reasons. One of the reasons, perhaps, is that a lot of grandparents have become supporters of their grandchildren. The husband takes off, leaves the daughter at home, she ends up coming back to the home, and the grandparents in fact pay child support. Then down the road when something happens, the grandparents become sort of separated from that grandchild even though they have supported it.

1550

I have a lot of empathy with what you are saying, as a grandfather. I have five grandchildren, three of them teenagers, and I find that they use grandparents as some safety valve and a support system. When things get hot at home, they come over and they talk about the problems and we are able to sort of counsel them. We go back and it helps smooth the transition and everyone is happy ever after, sort of thing.

I would like to see in the legislation some provision whereby grandparents do have access to their grandchildren, without necessarily undergoing some psychiatric testing to see, like you apparently were, if they are capable or the proper person to see those children. I think that is dreadful and I would like to see some sort of legislation introduced whereby if the parents fall out and they cannot be reconciled ever again—notwithstanding that, I really think the grandchildren have a right and the grandparents have a right to some communication, whatever the problems between the parents are.

**Mrs Lusher:** Yes, but you are talking about separated and divorced people. Also, like we say, we are in a situation—there

are thousands of us—where the daughters-in-law are manipulating the sons, or the son-in-law is manipulating the daughter, and using the children as weapons. "If you're going to call your mother or father or you're going to go to see them, don't come back. You won't see your kids." Now, they are concerned about their own children. They are not going to come, they are not even going to call you.

**Mr Mills:** With all respect, Sylvia, with all respect to that, I think that is another issue. You know, here we are talking about support payments and custody.

**Mrs Lusher:** Right.

**Mr Mills:** I am trying to say to you that in the custody realm of things that may be, I would be interested in ensuring some sort of access by grandparents to grandchildren who are the subject of the bill that we are looking at. Okay?

**Mrs Lusher:** Right. I understand it is for the support.

**Mr Mills:** Yes.

**Mrs Lusher:** But I want to point out one more thing. We have a father here, was married for 17 years, has adopted a little boy. For some reason or other there was a split-up; I do not want to go into that. He had custody of his child. They came at 2 o'clock in the morning to take this child out of the grandmother's—he was sleeping by his grandmother—and took him out and the mother of the child is now in California with him. It is costing him a fortune in lawyers to try to bring that child back. He is a Canadian citizen; he was born here. They did not sign any papers that they can take him. They just took him at 2 o'clock in the morning when the kid was sleeping, and he is paying, he is paying support.

**Mr Mills:** I realize it is a very emotional issue for you and I thank you for your comments.

**Ms S. Murdock:** You notice he has given up. In any case, I just want a clarification here. I am hearing you say, "Why should you pay support if you do not have access?"

**Mrs Lusher:** That is right.

**Ms S. Murdock:** Okay. At the same time you are asking for grandparents to have access.

**Mrs Lusher:** That is right.

**Ms S. Murdock:** So are you also, in the same breath then, saying that grandparents would pay support?

**Mrs Lusher:** Some of them would, yes. If they do not get support from the fathers or the mothers, some grandparents will pay for the children. But they have to see them, they have to know where they are, they have got to be involved with their lives. They want them to grow up good citizens, they want them to go to school, where you have thousands of them that do not have that. They do have extended families but they do not even know where they are.

**Ms S. Murdock:** I want to give members of the opposition an opportunity to ask questions, so I do not want to take up too much time before Mr Sorbara gets his hand in there. However, the other thing I wanted just to emphasize, I think—and I certainly sympathize with your plight and the plight of the other examples you have given—but Bill



17 of course, as has been stated, is the enforcement. I know we are dealing with the support.

**Mrs Lusher:** It is the enforcement for money, but where is the custody coming in?

**Ms S. Murdock:** Child support and custody order enforcement, and I know that this act specifically is on the enforcement section of the SCOE.

**Mrs Lusher:** For the money problem, right.

**Ms S. Murdock:** And it is not the custody.

**Mrs Lusher:** The bill does say "custody," but there is nothing in the bill that says custody.

**Ms S. Murdock:** No. That is right, because as I was explaining, this is for the enforcement section of the order and not the custody section of a support and custody order enforcement.

**Mrs Lusher:** Then they should not have named it. They should not put the word "custody" in. They should have said just for money, that is all.

**Ms S. Murdock:** No, no. This Bill 17 is an amendment to the section regarding enforcement and has nothing to do with the section regarding custody. So the whole act is called Support and Custody Orders Enforcement Act, and then within that act, this is an amendment to it.

**Mrs Lusher:** Then it is putting people on the wrong line, because they do not think that way.

**Ms S. Murdock:** I think that is probably a good suggestion that was made by a group. I know you have been here all week and—

**Mrs Lusher:** I have been here for five years, my friend.

**Ms S. Murdock:** But I have not been, but I have noticed.

**Mrs Lusher:** They ought to give me a special honour just to be here.

**Ms S. Murdock:** Anyway, thank you very much. I will not finish what I was going to say.

**Mr Sorbara:** The only reason why I would not want there to be a solution to Mrs Lusher's problem is that she would then leave us in the Ontario Legislature and I am not sure how we would get along without her.

**Mrs Lusher:** The only way you can keep me here is to make me one of your members.

**Mr Sorbara:** You could do that. It is easy enough to do that.

But the good news today is I have no questions, because I have had lengthy discussions with Mrs Lusher about her problem, including I have read the judgement that she referred to. I do want to congratulate her on the way she portrays lawyers in her submission. I find this is the most creative use of computer technology that I have ever seen and the only thing that disappoints me is that I did not think of it.

**Mrs Lusher:** But, Greg, you know something? Some of these lawyers—

**Mr Sorbara:** My name is here, but it is so small that I would need a magnifying glass.

**Mrs Lusher:** Do something good and we will give you a better name.

**Mr Sorbara:** But there is good news—  
Interjections.

**Mr Sorbara:** Mr Chairman, you are losing control of this meeting and you always do that when I have the floor.  
Interjection.

**Mr Sorbara:** Yes, it does say something. But there is good news. I heard, and it is on the record, that my friend Mr Mills, the member for—where is it Gord?

**Mr Mills:** Durham East.

**Mr Sorbara:** Durham East, has undertaken to introduce a bill in the Legislature to deal with the access rights of grandparents, and I think that would be a first good step if you could get a private member's bill, and I am sure Mr Mills would be anxious to sponsor that and work with you on the it.

**Mrs Lusher:** But if you will remember, as a private member's bill—

**Mrs Cunningham:** You should speak to Don Cousens.

**Mrs Lusher:** Yes, Don Cousens.

**Mrs Cunningham:** Mr Cousens from Markham.

**Mrs Lusher:** Don Cousens had Bill 45.

**Mr Sorbara:** But the fact is that Cousens is sort of a has-been.

**The Chair:** Perhaps we could get back to the framework of Mr Sorbara's question, if he has one.

**Mr Sorbara:** Cousens is sort of a has-been and Mills is on his way up, so I would choose him. Besides he belongs to the government party.

**Mrs Lusher:** That is right.

**Mr Sorbara:** He might be able to get his party to recant on what it did on Bill 124 and proclaim it—that would deal with one part of access—and to make it a government bill, his bill on grandparents' rights. The only downside is that you would not be with us every day in the Legislature, but I think we will have to bear up with that.

**Mrs Lusher:** If you want me to be there, then call on me. I will be there.

**Mr Sorbara:** Okay, I will.

**The Chair:** Thank you very much Mrs Lusher.

JOAN GATES

**The Chair:** Our next presentation is from Joan Gates. The time allotted in your agenda is I believe inaccurate. Ms Gates will only be with us for 15 minutes. Joan, please get comfortable, make your presentation and divide up that time however you wish. I am sure there will be many questions after your presentation. Go ahead.

**Ms Gates:** Thank you, Drummond.

I appear today basically representing myself as somebody that has accessed the system. To give you some background, my son was born in 1974. I am actually what they would term a former welfare mom. I was fortunate to beat the statistics, and in 1978 I graduated from Durham College

school of nursing. I became a registered nurse and instead of being a dependant of the government of Ontario, I actually sort of changed cheques there. I went on payroll.

Now my presentation. Basically, if you want to follow along, I appear today before you as a disheartened, angry mom, a mom whose spouse said he would never willingly make one support payment and he never did. He only paid when you chased him and when you chased him through the system and insisted. He paid once and then promptly stopped. One gets tired of having to chase someone for what has been awarded to you, especially within the very complex interprovincial system, not to mention the expense and the consumption of time that it takes, basically on a weekly basis. You have to go back over and over again. When you are living in Vancouver or Nanaimo or wherever, you are dealing with a huge maze, I will tell you.

1600

I feel that the ineffective system presently in place is insufferable and outdated and improvement is long overdue.

I believe that the major challenge to our society is a large task and that task is to change people's attitudes towards child support. It has to be an accepted practice to be accountable for one's children. Society must change its thinking towards the paying of child support. We have been successful in other campaigns. We have been successful in the drinking and driving campaign and the smoking campaign and I put it to you that this is an attitude that needs to be changed possibly through a campaign. Surely there is much more we can do for a commodity as precious as our children.

The damage, both physically and mentally, done to our children abandoned by one of their parents is insurmountable, unforgivable and basically a national disgrace here in Canada today.

The non-payment of child support is extremely damaging in the long term to your family relationship. A child grows up realizing that he or she has received no financial or emotional support, which is essential to his wellbeing, from one parent. One parent basically is left stressed out and struggling to provide the essentials of life without the financial or emotional support of a two-family situation. A child grows up aware that he or she is deprived of things that most of his peers seem to take for granted in a two-family situation.

A mountain of support payments, accumulated over a number of years, becomes a huge obstacle to ever establishing some form of family relationship, if you think later on that you are not as wise as you were when you were young. You have second thoughts about this and all these support payments make it extremely difficult to go back.

I would also like to comment, actually separate from this, that I believe child support is a shared responsibility between parents. I have not written it in here but it occurred to me on the Don Valley Parkway on the way down that there also should be some provision for ensuring that benefits are provided to children as well on a shared basis. Benefits, to some people, are major, especially if you have a child that is ill. Benefits should continue basically from both spouses, I believe.

I do not believe that the social service system that we have developed was intended to provide support for people who are totally capable of paying the support for their own children.

Recommendations: I recommend that the law relating to actually the support provisions—in my case, I am commenting on support—be changed. Parents do not need to battle for the rights of their children and I believe it is a child's right to be supported by both parents.

I think it is essential that we embark possibly on a massive campaign to improve society's attitudes towards responsibility and accountability for providing for one's children. There still is a belief out there that women take their child support cheques and go out and buy mink stoles. I do not understand why people do not realize that kids have to eat and basically that is what it is.

There possibly should be some provision for education dealing with stress and the stress encountered by parents in this situation as well.

I believe, and it is sort of unfortunate, that one of the only ways to do that is through mandatory attachment of wages for child support. I think it is an idea that has come. Unfortunately in an ideal world and under ideal situations we would not have to use it, but I think that in most cases it is the only way to go today.

**Mr Morrow:** First, I would like to really thank you for coming, Joan. I just want to ask you to expand on your last point about stress education because I can understand how this whole situation can be very stressful. I would just be really interested if you would expand on that a bit.

**Ms Gates:** Actually, I am a nurse. I worked in psychiatry, and of course I believe that most of our society needs stress education. The people I have talked to who have dealt with SCOE and dealt with any type of ongoing battle to get child support are extremely worn down, stressed out, and I believe that there should be some provision in some way to educate people around this. I am not 100% sure how we can access that family.

Actually, the South Oshawa Community Development Project in Oshawa is providing some degree of that type of thing, but there should be ways to tap into it. You know, even going to the offices—I went to register for SCOE and they gave me a packet of papers that I could not begin to ever fill out because I have not seen this person in 15 years, you know.

**Mr Sorbara:** I have a question dealing with your personal circumstances, if you do not mind, Ms Gates. You said that your former husband vowed that he would never willingly make a support payment.

**Ms Gates:** That is true.

**Mr Sorbara:** And then he made one, I guess under compulsion or something.

**Ms Gates:** Actually, he never even made the first payment. At that time I was on mothers' allowance, and of course they were not supported through that. When I graduated from nursing, I decided that I was going to pursue it on my own. When the court threatened to throw him in jail, he made a few payments, and other than that there was never consistent payment.



**Mr Sorbara:** Was this before the creation of the support and custody orders enforcement branch?

**Ms Gates:** Yes, it was. My son was born in 1974. He is 16 now.

**Mr Sorbara:** We are going back plenty of time.

**Ms Gates:** Yes.

**Mr Sorbara:** And then you said that you went to the branch to register. They gave you a pile of documents. Did you ever register with that branch?

**Ms Gates:** Actually, I never did. They gave me a huge pile of documents that basically—you know, descriptions of social insurance numbers, "What's your last job?," all that stuff that if you have not seen somebody in years, you have no access to. At that point basically I thought, "I can't do this." At that point it was taking letters every other week or something, that type of thing.

**Mr Sorbara:** I am sorry, I do not understand what that means.

**Ms Gates:** Actually, he was registered in the court system in Nanaimo, and it was taking letters on a consistent basis to get them to process. You want to go on with your own life and so you basically say, "Oh well," throw up your hands and give up.

**Mr Sorbara:** So at the time that you went to register with SCOE, your husband was not employed in the province of Ontario.

**Ms Gates:** No.

**Mr Sorbara:** He was in British Columbia.

**Ms Gates:** He was in Nanaimo.

**Mr Sorbara:** Was he working at a job as a salaried employee, or did you know that?

**Ms Gates:** Yes, he was.

**Mr Sorbara:** What is he doing now?

**Ms Gates:** I do not know. I gave up that chase and I thought I had better get on with my life, Mr Sorbara.

**Mr Sorbara:** So you got on with your life and you have not had the support payments, and you do not ever expect to collect arrears.

**Ms Gates:** I think that this probably is too late for me. Hopefully it will not be too late for others.

**Mr Sorbara:** Could I ask, just in that regard, the members of the policy branch of the ministry whether the automatic deduction order is enforceable outside of the province of Ontario.

**Mr Wessenger:** No, it will not be enforceable outside the province of Ontario.

**Mr Sorbara:** So there is no reciprocal arrangement under the act, or being contemplated, such that this would be enforceable in another province.

**Mr Wessenger:** Although we do have reciprocal arrangements with respect to garnishment in other provinces, including British Columbia—I might say that if your former husband is regularly employed in Nanaimo, I do not see why the collection of the arrears could not be enforced through SCOE.

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**Mr Sorbara:** Do I take it then that any defaulting spouse, any payer who is not paying who leaves the province of Ontario, will not come within the net of this legislation?

**Mr Wessenger:** Will not come under the support deduction order unless, of course, in future other provinces adopt similar legislation and then we can arrange reciprocal—

**Mr Sorbara:** Or we cede jurisdiction and lodge this jurisdiction with the federal government, assuming there is one.

**Mr Wessenger:** Yes, assuming there is one.

**Mrs Cunningham:** I wanted to say thank you for being here today. I am assuming you are here because you think the legislation is a good idea.

**Ms Gates:** Yes.

**Mrs Cunningham:** You have also enlightened us around some of your concerns about the administration of SCOE and being handed a whole package, perhaps with or without assistance in filling it in. The futility of trying to find somebody you have never heard of for so long is probably a very realistic scenario for a lot of women whose former husbands choose to leave the province and the country.

I wonder, just from a point of view, you have obviously had an interesting life since you have been a student and graduated, and you are now working and you know a lot, I feel, about people because of your profession. One of the aspects of this bill is the automatic deduction from pay. We have had a number of witnesses, both men and women, come before the committee and say that where people are paying regularly, this would be an infringement; in fact even challenge their ability to retain a job. We just had a gentleman earlier this afternoon tell us he was very concerned about it. I wondered if you had any personal points of view on that.

**Ms Gates:** Again, I think that in an ideal world in ideal situations, you would not have to go to this, but a lot of the people I work with, even though their spouses are consistently employed or employed on a regular basis, do not receive money unfortunately without having to go through the hassle on a regular basis, almost weekly. One of the co-workers I work with said to give you a message: She is tired of having to pay her lawyer on a consistent basis to get something that belongs to her and her kids.

I think that unfortunately it is a system that we are going to have to use because all the best intentions in the world do not get the money there at times, and once they get behind, you are in big trouble.

**Mrs Cunningham:** If I may ask another question, given the experience of your co-worker and yourself, did your husband leave the province of Ontario, do you feel, because of the fact that he may have to pay, or did he go away because of his work or his life or whatever?

**Ms Gates:** There is a belief that if you leave the jurisdiction or if you jump, you do not have to pay. I think there is an element in that, yes.

**Mrs Cunningham:** Of course, we have been warned that that may happen more frequently with this legislation by people who do pay regularly, which is a great concern. People who are regular supporters of their families who do not want to subject themselves to payroll deductions could in fact go elsewhere. What is your experience with Com-soc in regard to trying to retrieve the money from your former husband? Did you have to make a very valiant effort to find out where he was in the beginning or you never would have been eligible for support payments?

**Ms Gates:** Believe it or not, it was fairly simple. You just had to write the motor vehicles department in the province and they told you whether or not he was registered. They gave me his address actually. But I found that when he went into court, it was cry me a river in Technicolor—all of a sudden, “I have absolutely no money”—and I have seen it over and over again. They erased the arrears, I think on two occasions, so I never did get it.

**Mrs Cunningham:** Part of the reason for this legislation is so that the government itself can find more people to pay us back for the support that we have been giving to families who deserve to have that money. I mean, there is no doubt in the taxpayers’ mind, in my view, that they want to be able to support women and families.

It is interesting to note how frequently people escape from the province, and I am not sure whether this will be giving them another reason to escape. In my view, it will, but unfortunately this time we will have people who are willing to pay looking at that opportunity not to live in Ontario. I believe that strongly. They are already paying up. But this committee is going to look at that. We will see what we can do about it. I really appreciate your being here today.

**Ms Gates:** Again, in an ideal world and an ideal situation, maybe we would not have to use this, but unfortunately we are far from ideal and, once you start getting mountains of arrears accumulating, it is really hard to get any of that back. Maybe this system would allow for that not to happen. I really believe that our social service system was not built to support families that are basically capable of supporting themselves. Again, there is the idea of changing society’s attitude. Thank you.

**The Chair:** Thank you, Ms Gates.

I would like to draw the committee’s attention to something which was circulated during the noon hour, that is, exhibits 78 through whatever, in a packet that the clerk circulated. Please feel free to refer to them later on.

#### LAW UNION OF ONTARIO

**The Chair:** Now we have the Law Union of Ontario, and representing that group is Ellen Murray. Please ask your colleagues to identify themselves into the mikes for the purposes of the recording.

**Ms Cohen:** My name is Marion Cohen.

**Ms Curtis:** I am Carole Curtis.

**The Chair:** Thank you. We have approximately half an hour, give or take. Usually the time is divided up half for your presentation, half for questions from committee

members. However, the time is yours to use as you wish. Please feel free to commence when you are comfortable.

**Ms Murray:** Thank you. We will try to leave plenty of time for questions.

My name is Ellen Murray. I am a family law lawyer practising in Toronto. I have been practising for 14 years. I am here for the law union with Ms Cohen and Ms Curtis. The law union is a group of lawyers and paralegal workers in Ontario that has approximately 200 members, and among our membership is included a number of people like me, people who have been practising family law for 10 to 15 years.

We have represented men, women, mothers and fathers, debtors and creditors for a long time in the courts in Ontario, and we are here to tell you today that we are delighted to see Bill 17, because the problem of non-enforcement of support orders has been one that we have had to deal with, pretty much unsuccessfully, for years. We have seen our clients, both the debtors and the creditors, suffer from a system that is inconsistent and is not speedy. Bill 17, we believe, promises to rectify a large part of the problem that exists.

The brief that we have given to you talks in part about what we see as the problem and some of the changes that we think can be made to Bill 17 to improve it. But what I wanted to talk to you about briefly today was what we see the problem as in more detail and why, in terms of our experience in the actual court system, it is a problem and why we think Bill 17 will help solve it.

Let me first start with how support gets ordered, because I think one thing that it is very important to keep in mind when you are looking at this bill is that what we are talking about is enforcement of support that has already been ordered. We are talking about enforcement of orders where a judge has had an opportunity to see financial statements, to hear from the parties and to decide what is fair for a parent to pay for his or her children’s support. So we are not dealing with situations where an unfair order has been made in any sense of the word that we would recognize.

The next thing I think it is important to recognize is that, by and large, the amounts that are ordered for support in the court in Ontario are not generous amounts. They are not large amounts of money. I do not want to try to give any benchmark for support, but I think it would be fair to say, and I think we would all agree, that it is very unusual to see a child support order for more than \$500 a month. Yet, even the cost of day care for a child in the city of Toronto is usually much more than \$500 a month and much more than that goes into supporting a child. So we are not talking about extremely large amounts of money usually that are being enforced.

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The results of a family law system that does not adequately enforce its support orders are tragic, and we have been seeing that for a long time. At the most basic level, you get many, many situations where children are not enabled to enjoy any extras because the support is not



coming in. They are not able to have lessons, they are not able to have adequate clothing, that sort of thing.

I think the more serious and frankly the more common result of a poor enforcement system is a system that throws many, many more people on to the welfare system. We refer to this in our brief. There are many people in our economy today, and they are usually mothers, who are getting what I would call a marginal income. They are earning \$15,000, \$18,000 a year. Let's say they have two children. If the father is ordered to pay \$500 monthly in support and he pays it on time, they can hang on and they can have an adequate lifestyle for themselves and the children.

But if that support does not come on time, if it is late, even if it is paid in late clumps every three months, maybe every year—you do not know when it is coming—that mother is not going to be able to survive adequately in the system as it exists now. What she is going to end up doing is resorting to mother's allowance or to general welfare assistance because her costs will be less, she will not have to pay day care, she will not have to worry about when that money is coming every month and she will leave it up to mother's allowance to collect the money.

This is a problem that we have seen over the years that is very widespread. The Support and Custody Orders Enforcement Act that was brought in previously was supposed to solve that. Unfortunately, as I am sure you have heard all too often already, it has not made a big dent in that problem.

We are all familiar with cases in which an order has been registered for enforcement with SCOE for a year to a year and a half where the payer is employed or has substantial property and where no enforcement action has been taken during that whole time because the system is so bogged down. Just one case that I can give you, which I do not think is atypical, came across my desk a week and a half ago, I think, and illustrates the real depth of the problem in the system.

About a week ago, I was acting for a second wife—I will call her the second Mrs Smith—and the Smiths were breaking up. The Smiths were not a poor family. They had four rental properties in the city of Toronto plus their house. When it came time to divide up this property, we discovered that Mr Smith owed his first wife child support for three years. There had been a SCOE registration made on one of the properties just a couple of days before we were supposed to transfer, but nothing had been done to collect this child support for three years and Mr Smith certainly could afford to pay. He just had other priorities and did not want to pay, and the first Mrs Smith and her child were on family benefits. That is the kind of situation we are dealing with in many, many cases.

The major advantage, the best point we see in the new legislation is that it brings in an enforcement system that really is an automatic enforcement system, that truly is universal and, because it is universal, is non-stigmatizing. I think in some of the material that explained the bill from the Attorney General's office, they compared it to an income tax deduction. We think that that is a very good comparison, and if it is understood properly, the fact that it should be non-stigmatizing will also be understood.

I am sure if you look back in Hansard in the early part of this century when our income tax system was brought in, you will see a lot of questions and complaints about how this system was an invasion of privacy and could people not be trusted to pay their income taxes and—pardon?

**Mr Elston:** I was going to pay them.

**Mrs Cunningham:** That is not my attitude on that at all.

**Mr Elston:** But she is a Tory.

**Ms Murray:** I will keep that in mind. But we have had this system for many years. It works, at least in the sense that it collects most of the tax it is supposed to, and just think of where we would be if we counted on the honour system to pay your income tax.

**Mr Sorbara:** We do. It is voluntary assessment.

**The Chair:** Reserve your comments until later.

**Ms Murray:** It is voluntary assessment, but it is deducted from your paycheque. In any event, we saw the universality of this system as a real key to it and an aspect that would free up SCOE from what has been the impossible task of trying to enforce on an individual case-by-case basis every support order that is made in the province of Ontario and concentrate on the really hard cases that no act can possibly cover: the guy who quits his job all the time and goes from employer to employer to employer or the person who is self-employed. That is what we see as being the major benefit to the system.

Let me just highlight a couple of the changes that we would suggest in the act as it exists now. One, a real simple area is the language and the drafting in the act. We all found it very hard to understand. We think judges are going to find it very hard to understand. It needs to be simplified if we are to prevent more litigation than is necessary over it.

The second area that was of concern to us were the provisions that allowed opting out by agreement. We appreciate that people have to go to court and say, "We want to opt out," and that is supposed to be a protection, but we do not think it is enough protection. It is inevitable, if you allow people to opt out of this system, that whether you are in or out of the system, whether there is efficient enforcement or not is going to be a bargaining chip. We do not think it is appropriate that it be a bargaining chip.

In the example of the first Mrs Smith that I gave you just a little while ago, one of the results of the whole negotiation that I saw taking place between Mr Smith and his first wife was that he talked her into opting out of the current SCOE and talked her into cutting the measly arrears in half, even though he was well able to pay.

We feel that it is not appropriate to allow that opting out under any circumstances. The only legitimate reason that the creditor would have now for wanting to opt out is if the system is so slow that she is not getting her payments very quickly. Then she may say, "Well, I'll agree to opt out and at least I hope he'd pay me more quickly directly." If this new system solved that speed problem, then there should be no legitimate reason to opt out.

The second area that gave us concern were the provisions of the act that allowed a suspension of a support deduction order on the ground of unconscionability. We found it very difficult to imagine any widespread circumstance under which it could be said that it would be unconscionable to be in the system if it truly was non-stigmatizing, as it should be perceived if it goes into effect. Our fear is that the discretion given the court under the act to take a suspend a support deduction order if unconscionability is found will be too wide and will detract from the universality of the system.

We can all imagine cases where a judge would say, "Gee, I don't think it is so fair that this fellow should be in the system because he has had an interim support order for six months and he has paid it to date," or "He says he is afraid his employer will fire him, even though the act says he shouldn't be fired." Those should not be reasons to be taken out of the system if we want to preserve the universality of the system, and I think preserving the universality of it is key. If you leave judges the option to do this, it is our experience, based on the way judges in family court handle current enforcement proceedings, that there will be a number who will take that opportunity.

Just one last comment before I ask you if you have any questions you want to ask us. You may have been told by other presenters to your committee, or you may have received complaints on the order of, "I'm not getting access to my kids," or: "I have trouble getting access to my kids. Why should I be paying if I'm not even seeing them?"

We want to make one comment to you about that. Part of the history of family law and of family courts in this country for the last 20 years, and one of the progressive parts, has been that the concept that support payments and access rights are connected has been broken. Judges have tried to make it very clear, and judges have made this law, that children are not property that you pay to see.

The two things should not be connected and there are cases we have all seen where a parent legitimately cannot afford to pay support and still gets access rights, and vice versa where it is detrimental for the children in very serious cases to see a parent, but where the parent still has the ability and is ordered to pay support. It would be a regressive step to start linking those two issues again, in our opinion.

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**The Chair:** Thank you, Ms Murray. Mr Sorbara, feel free to ask a question now.

**Mr Sorbara:** That is the first time I have heard you say that, Mr Chairman, as I recall. Ms Murray, I am interested in a number of your comments on conscionability or on the linkage between access and support, and on the problem of the second Mrs Smith. I think I am going to take them in sort of random order. Can we begin with the relationship between access and support. I think I would agree with you that some presenters before this committee have made that submission; that is, a statement which amounts to, "I don't feel I should have to pay if I'm not getting access." I do not think this committee, nor do I

suspect the new government in the province is ready to relink what the courts have delinked, I think appropriately.

But I think what they have said as well, or others have said, is, "We see the government taking yet another step to make support more effective or to make the enforcement of the support order more effective, more automatic," and the government says, "We will therefore deal with child poverty, etc," but some of the people who are being denied access say, "Well, okay, but there is also an access order and the government not only is not taking any steps to help us to enforce that access order when the order is violated, but the previous government had a law passed after a lot of consultation and the new government just said: 'Forget it. We're not doing it.'"

I think that is their concern, or at least that is the concern I have heard from some members of the committee, "While we are talking about support and access and we want to continue to pay support, we are being denied access and the government doesn't seem to be very interested really, because probably we are not important politically, in helping us enforce those rights."

**Ms Murray:** I understand what you are saying and I think maybe I will let Ms Curtis answer your question.

**Ms Curtis:** I practise family law in Toronto as well. We also did a brief on the access enforcement bill, some of the same people, and it was very clear and it was very interesting to me that this was the first time in my practice that the bar was so universally opposed to a piece of legislation as it was to that access enforcement bill.

There are tremendous statistics available about the serious problem of support enforcement. Even now, after the provincial government has invested \$11 million to \$14 million on that program, they have only made a 10% dent in the compliance rate. In three and a half years the compliance rate has increased by only 10%. On the other hand the previous government put forward a bill based on absolutely no empirical data that I am aware of. I have never seen any empirical data about access as a problem or access enforcement as a problem.

It is interesting too that the real problem with access is not denied access, quite frankly; the real problem is conflicted access. Most conflicted access now is resolved by telephone calls between lawyers, or sometimes if people are really grown up, by the parties themselves. The issue of denied access in some families is such a complicated, difficult, unhappy issue that frankly I am not certain the legal system can ever fix it in some small percentage of the families, and if there is a way to fix it in the legal system that bill was not the way.

Now I do not want to take the focus away from support enforcement, but I would urge you that if you are concerned about this area, to revisit the submissions that were made to the justice committee that looked at that bill, the lawyers' groups that came to the committee were universally opposed to that legislation.

**Mr Sorbara:** I just want to say that I understand how political lobbying works. I happened to be the minister responsible for women's issues at the time and did a good



part of the negotiating of the terms of that bill, and I simply want to differ with you.

I agree with your assessment that the nature, that the problems relating to access are very difficult and cause great concern between the parties and sometimes can be very harshly disputed and I would not ever want to submit to you that Bill 124 solved all of those. But it did put in a few important valves and a few opportunities to have those matters perhaps reconsidered, and it had provision in it, by the way, for the access order to simply be denied; that is to say, to be wiped from the books. In any event, I agree with you, I do not think we should discuss it. I just wanted to make the point in response to the support and access issue.

I hear you saying the very same thing that this government is saying about making it universal and therefore something that is generally accepted; that is, the automatic deduction order. I see the issues surrounding support to be not quite as difficult as the ones surrounding access, but difficult as well, with a lot of emotion and a lot of sentiment built into it and not as simple as being solved by an automatic deduction order.

Let's take your example of the second Mrs Smith. There was an order outstanding against Mr Smith that had been rarely complied with. What was it about the current system that prevented a garnishment order against his salary to be put into place and those payments regularly collected from his employer and paid to the first Mrs Smith, if I have got my characters in this play right?

**The Chair:** Before we go on to that, which is of course the subject of Bill 17, I am wondering if Ms Curtis could define for us, because we have had some question, what the distinction is between conflicted access and denied access?

**Mr Sorbara:** We could have that when you are questioning the witness.

**The Chair:** If you would not mind.

**Ms S. Murdock:** Just on that point, Mr Sorbara, when someone is speaking and is responding to the question, if you do not know, and I am claiming ignorance or whatever, but it is a little tough to understand and I think a clarification question is not out of order.

**Ms Curtis:** There is a lot of hostility and animosity in some separating families. Some of that will abate with the passage of time and some of it will never go away entirely. It is an unusual family for which even, say, three years after the separation, access is smooth and easy all the time and there are never any disputes over access.

Sometimes those disputes take place at the transfer point, when the people have to have contact with each other. Sometimes they take place on the telephone because the child has hockey this weekend and does not want to go away for the weekend. Really, all I am saying is that conflicted access is pretty normal for separated families. It is not ideal and we all wish it did not happen, but it is very unusual for a family to say to you, "We've been separated five years and access has been easy and smooth always."

The fathers who say that they are denied access may in fact be being denied access, or they may be in families

where there is so much hostility and conflict between the adults that the children no longer want to pursue a relationship with the father because it is just so unpleasant if they do. The children are sick of being in the battle zone, if you like.

**The Chair:** Thank you and I apologize for the interruption.

**Ms Murray:** Can I just add one thing to that? I think, and I do not want to make this into a discussion of Bill 124, but the Canadian Bar Association—Ontario's and our problem with it was that we, in our experience, saw most of the access difficulties as really problems that required a social worker and not a judge. What Bill 124 did was give open access to the courts, much more access than people in a lot of other situations had, and we thought that would exacerbate the problem and not solve it. I know there are differences of opinion on that, but that is why.

1640

**The Chair:** Could we return to Bill 17.

**Ms Murray:** To Mrs Smith? Okay. You are right that in a system that was not overloaded, Mr Smith could have been garnisheed. A writ of seizure and sale could have been placed against his house and have proceeded more aggressively, and there are lots of Mr Smiths who I see. I think that is part of my point. I suppose the other way to handle the problem is to pour more and more and more money into SCOE so that we can handle every single one of these cases on an individual basis. But if you have a system where you know from the beginning where the source of income is so you get it set up in an automatic way for, let's say, even 50% of the people, including maybe Mr Smith, then the people who are real problems can be dealt with.

**Mr Sorbara:** I guess it surprises me to hear that from you and the reason is this: there is general agreement that the system is overloaded. In fact the development of this proposal, initiated by a previous Attorney General under a previous government, was seen as a systemic change, an administrative change to deal with an overloaded system, a pretty strong measure to deal with a system that was not able to cope. It was not an answer to child poverty or an answer to family poverty and to mother and child poverty, but just a systemic, an administrative change to a system pretty draconian, because you are, with a broad brush, bringing a whole universe of payers in where many of them, perhaps 20% or 30%, would pay in any event.

My problem is that in these committee hearings and within the ministry there is not an acknowledgement that this is really what we are doing. We are trying to save money at SCOE. We do have an alternative. We could spend more money at SCOE and enforce these things more effectively. I am worried about that and your support of what they are saying, because the administration of the branch, at least initially is going to become far more severe as it deals with a far larger paper burden. It is going to be dealing with every single support order now. There are going to be no opportunities to opt out, and we will discuss that in a second.

With your own experience of this branch, do you honestly believe that, absent additional resources, the ability to handle all this new paper and all these new problems associated therewith—remember, by the way, that just because you have an automatic order does not mean it automatically happens. It means there are more disputes. It means there are employers who balk, there are employers who do not understand, there are employers who make mistakes, there are employers who, for example, make a deduction that is too high and pay the money and the debtor or payer does not get the size of his paycheque, and then who has a right and all that has to be worked out.

It is easy to say ask the income tax department and it is easy to say there is automatic deduction at source, but the truth is that the Department of National Revenue now is a huge department which makes lots of mistakes and takes thousands and thousands of bureaucrats to administer. My problem is that—

**Ms Murray:** I am losing track of your question.

**Mr Sorbara:** My question is this: Do you honestly believe that with the added ability, added right, added obligation to collect all this money and disperse it, we are really going to change attitudes of people, and second, that we are going to have a system that helps the people who are not being helped right now?

**Ms Murray:** Yes.

**Mr Sorbara:** That is the question.

**Ms Murray:** I am not going to comment about the costs. Obviously I have not sat down and analysed the relative costs of this, but, yes, I believe that if it becomes universal, it will become less stigmatized.

**Mr Sorbara:** Do you believe there should be no provision for payers and receivers who have established a working record to ever be freed from the system?

**Ms Curtis:** That should not be the test. A good payment record should not be the test. Are you aware, Mr Sorbara, that 75% of support orders are in default, that the people with the good payment records are totally in the minority?

**Mr Sorbara:** Hold on a second. I am aware that in about every account that I keep with every one of my creditors, I am periodically in default—income tax department—and I believe that 75% to 80% or 90% of the people are in my situation.

**The Chair:** Mr Sorbara, your financial concerns are not open to examination here, sir.

**Mr Sorbara:** Hold on. I am going to be coming—

**Ms Murray:** This is talking about giving dependent children and wives a bit of a priority over Avco.

**Mr Sorbara:** No, I hear you.

**Ms Murray:** I think we should do that.

**Mr Sorbara:** I am going to tell you that—

**The Chair:** Excuse me. Mr Elston, you had a question, I believe.

**Mr Elston:** Yes, a couple.

**The Chair:** Perhaps you could limit it to one, without too much preamble.

**Mr Elston:** Oh, God.

**Mr Carr:** I will give up some of my time.

**The Chair:** Go ahead. Thank you, Mr Carr.

**Mr Elston:** The second Mrs Smith issue brings an interesting problem to the fore which we really have not examined very much. The first Mrs Smith ought to have had her order enforced; it ought to have been. You are now acting for the second Mrs Smith and, I presume, the children of that marriage. We have always assumed that it is a simple case of one separation, one family, and sort of making provision for the children of that first union. We seem to have dismissed the fact that when we talk about having children out of poverty, we do not just talk about the children of the first marriage, the split marriage or union, but we also talk about the children of the second and ensuing.

For you as a solicitor, a barrister, it becomes a difficult test as to how you make proper arrangements now for the children of the second union with Mrs Smith. How do we ensure that this bill reacts fairly to cover both the first separated spouse and children, and the second, if you can? Because there is no question as between the equity of the rights of those children of the two now broken marriages, and the possibility that there could be children of a third union.

**Ms Murray:** Sure, and these are problems that family court judges have to deal with all the time and so do we. This act does not have to deal with it in any particular way. I do not think it affects this act. I will tell you that what Mr Smith should have done when he went ahead and had other kids, if he thought he could not afford to pay for the first children, was go back to court and say, "I want a variation on my first support order."

**Mr Elston:** That is a tough argument to make, though. I have been in a situation where I have seen that done and people do not usually give him too much of a break. They say, "If you had the commitment to your first family, then you shouldn't be back here, having chosen to have a second union."

**Ms Cohen:** That is where the issue is. The issue has to do with how much support he should be paying, and this bill is not about how much support he should pay family 1 or family 2.

**Mr Elston:** But it is about this, because if you have an order under SCOE and it is already existing and you are now, Ms Murray, approaching the bench for another order where SCOE is already taking up to 50% of the cheque, where do you find the flexibility to issue another order on this person's paycheque, if he is already paying or deducting for one group of dependants and now you apply for a second group and already the 50% thing is reached? How do we make sure this thing can work? Do you know what I mean?

**Ms Murray:** I think Ms Cohen is answering your questions. I think the problem you have is how much money he should be paying and with respect—

**Mr Elston:** No, I am asking how SCOE enforces. If the first order has already reached the 50% level of his



wages and you are representing the second, where do you get SCOE taking any money on the second one?

**Ms Cohen:** The bill is dealing with that issue and we have actually commented on it in our submission. The bill is dealing with variation issues. You are talking about varying support orders. The bill deals with variation of support orders.

**Mr Elston:** But is that not a difficult argument to make to a judge, that in the first case children of the first union are entitled to \$100 a week, okay, and now that the second union has broken, those children likewise should be getting \$100 a week, we will say, just to keep it simple? The total now is \$400 a week and that represents 85% of the take home. Who do you reduce?

**Ms Curtis:** This is a very serious problem in family law.

**Mr Elston:** It is.

**Ms Curtis:** It is a very different problem from this bill, but judges every day have to deal with families where there is not enough money to go around for the three sets of children, and three sets is not unusual. What happens where there is not enough money to go around is that everybody suffers equally. That is probably the only fair way to do it. Where there is enough money to go around, we hope everybody benefits equally.

But this is something that is being addressed in variation applications all the time. It is worth you knowing this, though, that a huge percentage of variation applications are triggered by enforcement, that a lot of debtors who have not been paying and are somehow attached by SCOE in one way or another suddenly decide it is appropriate to seek a variation of the order.

1650

**Mr Elston:** For a couple of reasons. One, they probably did not want to spend the money in the first place, if they did not have to pay it. The other is that if I happen to represent the first Mrs Smith, in Ms Murray's example, you representing the second, I presume that somehow I would want to be at the trial of the issue about support. Am I given that opportunity on behalf of the first Mrs Smith?

**Ms Murray:** That can happen.

**Mr Elston:** It can happen? But it also could equally happen that Mrs Smith 1 might be advised that she has received a variation or that a variation of her payment of support for her child could have taken place in her absence?

**Ms Curtis:** No, no, no.

**Mr Elston:** Okay. So that will not take place.

**Ms Murray:** I think Ms Curtis's point is that judges do this balancing act—

**The Chair:** Are you aware—

**Mr Elston:** I just have one other question, with respect to—

**The Chair:** Excuse me.

**Mr Elston:** This is an important issue.

**The Chair:** They are all important.

**Mr Elston:** Language. You have come here and said it is difficult to understand, and I happen to agree with you, but in fairness to the people who draft, how do you prevent litigation when you change the whole style and presentation of legislation? It is generally viewed by judges, they become comfortable in seeing it, and when somebody brings a new term into the courtroom, if somebody wished to be litigious in nature or wished just to hold things up, you would take a look at clause whatever and you would start litigating it. Do you have some specific places where you think we could help the drafters, rather than just saying it is complex?

**Ms Cohen:** We did address it, actually, in our brief. Basically what we are looking for is consistency in wording and reorganization so that similar issues are dealt with in single sections or close to each other rather than at different places, and so on.

**Mr Elston:** So it is really correlating some of the provisions much better, bringing them together, shortening it, as opposed to the actual language?

**Ms Cohen:** And when you bring them together and you look at them, you start to see the inconsistencies that are there, and that is why I think another look has to be taken at the draft.

**Mr Elston:** And it is in here someplace?

**Ms Murray:** Yes.

**Mr Carr:** I had two questions, but I will cut it down to one. I will do the one that I think has the shortest answer. We had the National Association of Women and the Law here earlier today and they said some of the variations could take a year. Another chap was in and he said it could be two years; it depends on the jurisdiction, and I guess most are in Toronto. For any type of variation to take place, what would the average time be, just based on your experiences?

**Ms Murray:** It can be up to a year. It would be unusual for it to be two years. If we are talking about a support variation, it can take place in three months.

One thing that is important for all of you to understand is that in the current system it is not always in the interest of the debtor to advance his variation application. A very typical scenario is that a payer is not paying or is not paying the full amount. SCOE finally catches up with him. He goes to family court on, let's say, a default hearing, because they do not know where he is working so they have not garnisheed him, and says: "I moved in with a woman who has two children and I have to support those children now. My debts have gone up, so please don't enforce this order against me completely. I'm going to bring a variation application in Supreme Court"—because these usually take place in two different courts—"right away." And he may get a family court judge who says: "All right. I'll only enforce half of the order against you, and I'll adjourn this for three months, so you can go to legal aid and you can start this variation application."

**Mr Carr:** But if it goes to Supreme Court, would that not be a long period of time?

**Ms Murray:** No, it is not necessarily a long period of time. It sounds fancy, but there is a summary proceeding in Supreme Court.

**Mr Elston:** It helps for billings.

**Ms Murray:** The three months rolls around and the guy comes back and you find he will have a lot of excuses why he has not proceeded, and he may not even have started the variation application or he may have just started it the week before. So as long as he has that partial stay or suspension on the enforcement order, often he does not have an incentive to proceed with the variation application.

One of the recommendations we make in our brief is that when you are looking at putting some sort of—there is a variety of names it is called in Bill 17—partial suspension, stay, variation on a support deduction order, it should be made a condition if somebody is going to get that partial stay that he has commenced his variation application already, so that you make sure the real problem is getting dealt with quickly.

**Mr Carr:** But in Toronto you could be looking at a year, maybe even a little over, for something like that.

**Ms Murray:** You could be.

**Ms Curtis:** I think it is inappropriate to try and put an average time on it, because 95% of cases do not go to trial. Just because you start a variation, the path to a final answer for you is not strictly: When is the trial? Ninety-five per cent of cases are settled.

**Mr Carr:** But do they not go up to just the trial date—forgive me not being a lawyer—and then miraculously settle just before trial date?

**Ms Curtis:** No. There is a good system in place for pre-trial conferences, where a judicial officer looks at the merits of both sides, talks to the lawyers, sometimes talks to the clients and says, "I would reduce this" or "I wouldn't reduce it." Consistent with Mr Elston's comments, it is interesting how often at the pre-trial conference the judge will say: "It was not wise for you, sir, to go and have a second or third family. You have the right to do that, it's not my business, but financially it was a risky thing for you to do."

**Mr Carr:** That could be costly, though, I would think, any process using lawyers.

**Ms Murray:** It can be, but I think it is incorrect to think of trials in this system and I think that is what Ms Curtis is trying to put across.

**Mr Carr:** I understand about the trials. All I know is that the billings still keep going up with the lawyers, right? Even though we are talking and we are making phone calls, the billings are adding up.

**Ms Curtis:** It is really legal aid that is carrying a lot of the load here, because if the debtor has a real inability to pay a meritorious variation application, that debtor is going to be on legal aid.

**The Chair:** Mr Carr, I appreciate your short question. Do you have many more of them?

**Ms Murray:** Let me just add one thing, though. In the general court system—

**The Chair:** Mrs Mathysen.

**Mrs Mathysen:** I would like to tap into your experience in family practice. It has been said to this committee by the Canadian Payroll Association, and it has been echoed a number of times since, that parents who default do so because they cannot afford to make payments. Is that your experience?

**Ms Curtis:** The statistics are really overwhelming. I am sure the people at SCOE could provide you with the statistics.

**Mr Carr:** They cannot. They said they could not.

**Ms Curtis:** Ability to pay is not the issue for support defaulters. The issue is a conscious decision to prefer other obligations, a conscious choice. There is a small percentage of debtors who genuinely have no ability to pay, either by changed circumstances or other reasons, but the vast majority of debtors who are not paying have made a choice not to pay. Frankly, I am interested that the payroll association came to make submissions but they are hardly experts on support debtors.

**Ms Cohen:** Could I just add a follow-up? Mr Sorbara said that every month some of his creditors do not get paid, and I would bet that every month his children do get supported. When people separate, those priorities reverse: people stop paying their children and continue to pay their Visa and their MasterCard and their other creditors. That is very common.

**Ms Curtis:** Lenore Weitzman's statistics on this are quite shocking. In the first year after separation the standard of living of women and children declines by 76%; in the first year after separation the standard of living of men increases by 43%.

**Mrs Mathysen:** It has also been said here that Bill 17 will encourage willing payers to quit their jobs, leave the jurisdiction, in order to avoid making those payments. What is your reaction to that?

**Ms Murray:** I find it improbable. Somebody who is actually willing to pay—I cannot see why they would leave a secure and well-paid job in the civilized province of Ontario just because they resent having a payroll deduction made. I think there is one other thing that it is important for you to know. Most payers, especially payers who are financially squeezed, will in fact already be notifying their payroll offices that they are making support payments, because if they do that they are entitled to ask the Department of Revenue for a reduction of their income tax payments at source. What they are really doing is getting a pre-payment on the big income tax return they would get at the end of the year. So for thousands of employees already, who feel they need that extra financial relief, they are telling their payroll offices this already.

1700

**Ms Cohen:** The other thing is that we hear this threat all the time in individual cases, because we are always hearing from the wives, if they are the ones we are dealing with, that the husband has said he is going to quit his job and he is going to leave and he will never pay a cent. In



fact, that is not what happens; it is a very, very rare circumstance.

**Ms Murray:** Those are not the people who would be paying voluntarily.

**Mr Fletcher:** I am just happy that you separated access and support payments. We on this side of the table know that Bill 124 was poorly negotiated and poorly written. I know you have a lot of problems with Bill 17. Does Bill 17 in your opinion mean there are going to be more and more cases going into the courts? Is it going to block the courts up?

**Ms Murray:** I do not know about more. Hopefully there will be less, but the cases will be about different things, like what an income source is.

**Mr Fletcher:** Do you see that as being detrimental to a person getting payment, just going through the definitions and ironing out little bumps that are there?

**Ms Curtis:** There is always a shakedown time with new legislation. We are still feeling shakedown effects from the Family Law Act that was passed in 1986, five years ago. So there would certainly be a time following the immediate passage where people would be testing the language by litigating it. That is one of the problems with using "unconscionability," for example, as the test for not making a support deduction order. We are nervous about there being judicial discretion on that point. This is in our brief, but that is a step backwards, allowing judicial discretion on enforcement, because the Support and Custody Orders Enforcement Act, when it was passed, removed judicial discretion from enforcement. Enforcement became an administrative act. Only at the wish of the creditor was the branch not involved.

**The Chair:** Thank you very much.

Interjection.

**The Chair:** If the committee agrees to continue going—

**Mr Sorbara:** I thought we were sitting until 5. It is after 5 o'clock.

**The Chair:** We are scheduled to sit until 5 o'clock, but this group has already been with us for three quarters of an hour.

**Ms Murray:** We can stay if you want to stay for a bit.

**The Chair:** Mr Morrow, you have one question? One question.

**Mr Morrow:** First, I would like to thank you for coming and spending your time. Most of my questions have been answered. The one I would like to ask is that you talk about how when this will go to court there will be different things fought. Would a layman's term pamphlet on Bill 17 help that situation?

**Ms Curtis:** Yes, it would, but it is important for the committee to know that the group of lawyers who worked on this brief have over 70 years of experience in family law, and we found this bill really hard to understand.

**The Chair:** Is it with the committee's indulgence that we continue? The witnesses have agreed to stay longer. Mr Mills?

**Mr Mills:** Mr Chairman, I think I and you and some others have an appointment at TVOntario at 5:30. I do not want to keep them late. We are going to man the telephone lines to encourage people to subscribe. It is MPP night to raise funds for TVOntario. Everybody, I think, of all parties was invited.

**Mr Sorbara:** I could have asked my questions in the time—

**Mr Elston:** If we undertook not to bring the government down in the absence of a couple of members of the government caucus, would that help? All we are trying to do is get some information from people, that is all.

**The Chair:** We are addressing the witnesses at the moment, but we have the report of the subcommittee to hear as well.

**Mr Sorbara:** That should go pretty quickly.

**The Chair:** I should hope so. If the other members wish to remain, I know a couple of us have to leave. With the indulgence of the witnesses, we could go over the report of the subcommittee quickly, which I think could be done. If they are willing to remain, I think there are a number of people who are interested. Is that the consensus?

**Mr Morrow:** If you would move to the sub report now, I am sure the other side is quite agreeable to that, and then we can let Mr Sorbara ask his questions after that. Is that fine?

**Mr Sorbara:** No, I am certainly not willing and not going to ask these witnesses to stay during our subcommittee report.

**The Chair:** If we can do that quickly; otherwise we are in a procedural problem. We obviously would have to adjourn.

**Mr Sorbara:** I will write their law union and get their opinion on these questions, Mr Chairman.

**The Chair:** We have had some very interesting opinions. I would like to very much thank the witnesses, particularly for staying for such a lengthy period of time and giving us such informed advice. Thank you very much.

**Ms Murray:** Thanks for listening to us.

#### SUBCOMMITTEE REPORT

**The Chair:** We are reading the subcommittee report from last evening for the acceptance of the full committee, the report of the subcommittee meeting on 12 February.

"The subcommittee met Tuesday 12 February to discuss committee scheduling. It was agreed that the conflict-of-interest schedule for the week of 18 February 1991 be as follows."

**Mr Sorbara:** Dispense.

**The Chair:** Dispense, thank you.

"It was further agreed that professors Desmond Morton and Ian Green"—

**Mr Morrow:** Dispense.

**The Chair:** Dispense, thank you. "It is also agreed that clause-by-clause consideration of Bill 17 commence on 19 February." Dispense?

**Mr Morrow:** Dispense.

**Mr Sorbara:** Dispense with the reading; I want to discuss that last clause.

**The Chair:** Okay. Ms Murdock?

**Ms S. Murdock:** Did I hear you say 19 February for clause-by-clause?

**The Chair:** That is right. Tuesday 19 February.

**Ms S. Murdock:** I did not know anything about this. Just one second here.

**Mr Elston:** Neither did I and I am not available. I have other things on.

**Mr Sorbara:** Could you not do it at a date to be worked out by the subcommittee, like you recommended last night?

**The Chair:** Was this not agreed to by the subcommittee?

**Mr Elston:** Not in consultation with the members.

**Mrs Mathysen:** This is the report that was prepared by the clerk on our advice after the meeting last night.

**The Chair:** So the clerk prepared that with the advice of the whips of the three caucuses.

**Mrs Mathysen:** At the meeting last night, yes, of the subcommittee.

**The Chair:** And the times that were left available for consideration of Bill 17, there is still a problem with those times?

**Mr Elston:** There is for me. I am not available. I have already a commitment in the riding. Understanding that I was not going to be in committee next week, I have had an engagement which is now long-standing in my constituency and I understood we were going to make the arrangements to have—well, Ms Murdock is another person, and Mr Kwinter is another, who is not generally on the committee—I thought that we were going to be allowed to tell you about our availability.

**The Chair:** The prime reason for moving it was because of Mr Sorbara's difficulty with Friday.

**Mrs Cunningham:** In the beginning it was.

**Mrs Mathysen:** I have something worked out here. Should we hear it? All right. Now, we want to be reasonable and certainly it is very important for us to take the time to consider the presentations of the various witnesses, and of course we do not want to miss Mr Sorbara's colourful presence from committee on Friday 15 February, and the third party does have some amendments which are important to it. In other words, we want to be fair to all parties. However, the members opposite must surely be aware that finishing the clause-by-clause of Bill 17 is imperative by the end of next week. Therefore, we move that we accept the report of the subcommittee, adjourn on Thursday evening 14 February and reconvene our clause-by-clause review of Bill 17 on 19 February at 10 o'clock.

**Mr Elston:** Will we have an opportunity to discuss this?

**The Chair:** That is essentially the time we have here, is it not?

**Mrs Mathysen:** Yes.

**The Chair:** Okay, thank you. Mr Sorbara.

**Mr Sorbara:** Mr Chairman, with all due respect, I think that rather than a nice speech in rhetoric, we could work this out. We could agree on a time. If it is the view of the government whip on the committee that this bill has to be done clause by clause, I would like to know more about that. I would really like to know the urgency. What is going on? I mean, I can cancel my stuff for the 20th or you can do it without me.

I have the feeling that nothing we propose or nothing we recommend is going to be considered anyway, so it maybe does not really matter. If you would just even tell us that; if you would just say to us, "Look, none of your amendments is going to be considered, so don't bother."

**Mrs Mathysen:** That is not what I said at all.

**The Chair:** Excuse me.

**Mrs Mathysen:** I said we want to hear from you, and because you cannot be here on Friday, we are going to dispense Friday and we want—

**Mr Sorbara:** But Mr Elston could not be here—

**Mrs Mathysen:** —the third party to have time for its recommendations.

**Mr Sorbara:** Irene, just let me finish. Okay?

**The Chair:** Sharon? Ms Murdock?

**Mr Sorbara:** Mr Chairman, might I just finish? Rather than just having a piece of paper with a date given to us based on the government priorities, if we could sit down, you and me and the Chair and the whip for the Tories, and work out a reasonable date, I think that would be great. I do not know why we have not done that. That was the heart and soul of my recommendations; that is, that we would not do it Friday but we would do it on a date that we worked out. Now, you went to your whip, I guess, or your government House leader and said it had to be done next week. This is news to us.

**The Chair:** Excuse me. If I might interject, there are two considerations here. One is that we are meeting for three weeks. Next Tuesday, whether we are meeting to consider conflict-of-interest guidelines or this legislation, we are scheduled to meet on that day. Now, the clerk suggests that one of the things we could do would be to hear from the Premier on Monday next—that is, Monday the 18th—who would be introducing his guidelines and would be spending some time before the committee, and that the other scheduled witnesses would be deleted so that we could consider this legislation. We can pick up the conflict-of-interest issues at a later time, possibly after the House has resumed.

**Mr Sorbara:** Why is it that we cannot sit down and discuss that on a reasonable basis? My preference is to not do clause-by-clause during this week, or at least not decide on this week until I have had an opportunity to sit down with my colleagues Mr Elston and Mr Kwinter, who have been here through these hearings, and figure out a day when they are available. That is all. You have not even asked Sharon when she is going to be available on the 19th. Is everyone available on the 19th?

**The Chair:** What I suggest, as we have had difficulty with this timing and with the timing of the Premier's



guidelines, is that the subcommittee deal with this issue and attempt to achieve a resolution and the subcommittee, in turn, report back to us. I would suggest, seeing that there are some major difficulties—you want to confer with Mr Kwinter as well as Mr Elston—that you give the opportunity to do so at a later time. Yes, Mr Morrow?

**Mr Morrow:** Can I ask that the government caucus for two minutes on this, please?

**The Chair:** Yes, certainly, we can. We are out of session. We will resume in two minutes.

The committee recessed at 1714.

1721

**The Chair:** I would like to suggest we have not reached a resolution. We have adjourned briefly and it appears to me, without hearing from any caucus, that there is no resolution of this issue. I would suggest that the subcommittee find a time to discuss that and conference with the other members of their caucuses and attempt to secure a time next week, next year, next month, preferably as soon as possible.

**Mrs Cunningham:** We will make a call to Charles Harnick, which is our great concern. There has to be two

of the three, that is my problem right now. I do not know what his schedule is.

**The Chair:** Could you endeavour to pick a date as soon as possible so that we can have that by end of day tomorrow?

**Mrs Cunningham:** Yes.

**Mrs Mathysen:** Friday is off for sure? Friday is cancelled?

**The Chair:** No.

**Mrs Mathysen:** Trust me.

**The Chair:** Mr Sorbara is the one who did not want Fridays.

**Ms S. Murdock:** Can we agree that Friday is gone?

**Mrs Mathysen:** We agree that Friday is gone.

**The Chair:** Okay, we have at least agreed that Friday is gone. We have not agreed to anything else.

**Ms S. Murdock:** We agreed on that but now it is to find another day.

**The Chair:** I would like to adjourn until 10 o'clock tomorrow.

The committee adjourned at 1722.

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## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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# Legislative Assembly of Ontario

First Session, 35th Parliament

## Official Report of Debates (Hansard)

Thursday 14 February 1991

### Standing committee on administration of justice

Child and Family Support  
Statute Law Amendment Act, 1990

# Assemblée législative de l'Ontario

Première session, 35<sup>e</sup> législature

## Journal des débats (Hansard)

Le jeudi 14 février 1991

### Comité permanent de l'administration de la justice

Loi de 1990 modifiant les lois  
relatives aux obligations  
alimentaires

Chair: Drummond White  
Clerk: Lisa Freedman

Président : Drummond White  
Greffier : Lisa Freedman

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Thursday 14 February 1991

The committee met at 1011 in committee room 1.

### CHILD AND FAMILY SUPPORT STATUTE LAW AMENDMENT ACT, 1990

### LOI DE 1990 MODIFIANT LES LOIS RELATIVES AUX OBLIGATIONS ALIMENTAIRES

Resuming consideration of Bill 17, An Act to amend the Law related to the Enforcement of Support and Custody Orders.

Reprise de l'étude du projet de loi 17, Loi portant modification des lois relatives à l'exécution d'ordonnances alimentaires et de garde d'enfants.

**The Chair:** I would like to call the committee to order. As we had mentioned earlier, we will be sitting until at least 5:30, as there is a presentation added at 5:15. The other point I would also like to mention is, of course, that, subsequent to last evening's meeting, we still have not an agreement about timing in regard to clause-by-clause consideration of the bill. The clerk suggests that immediately after our adjournment for lunch the subcommittee members meet to discuss potential timings. I would suggest that people from the various caucuses mention to their subcommittee member what their schedule is to facilitate that meeting. And then I would also like to remind people of the routine.

**Mr Elston:** That is at noon, did you say?

**The Chair:** At noon, yes. Will Greg be here?

**Mr Elston:** I just realized that since Greg is not here I am probably supposed to sub for him.

**The Chair:** Okay.

**Mr Elston:** And I have an engagement at noon which I will run out and try and cancel.

**The Chair:** Okay. So you will meet with Mrs Mathysen and Mr Carr, then?

**Mr Carr:** Hopefully it will be Diane. I am sure it will be Diane. I cannot either.

**The Chair:** So Diane will be subbing for you.

**Mr Carr:** But I have always been easy. Just fill in the dates and let me know.

**The Chair:** You are, you are. I would also like to draw the committee's attention to the fact that we have a number of presentations, some of which are a half hour, some of which are 15 minutes. Again, as earlier, the time will be divided up roughly in equal amounts per caucus. The rotation will alter in a clockwise fashion starting with the official opposition—for the first rotation, that is. And for the 15-minute presentations, given that there may not be sufficient time, I would suggest that there only be one question per caucus and that if committee members have particular desires to speak at length to any of the witnesses or a number of questions, they seek the support of their other

caucus members in doing so and then, if extra time is needed, perhaps the consent of the other committee members.

### ONTARIO PUBLIC SERVICE EMPLOYEES UNION

**The Chair:** I would like to now call upon the representation from the Ontario Public Service Employees Union. I know that some of you are familiar with presentations before committees but if I could, none the less, go over that at the outset: Very simply, we have half an hour and you can divide that time up as you wish. Typically, it is a half for your presentation and a half for questions from committee members. Would you please identify yourselves into the microphone for the purposes of the recorder? Please feel free to commence whenever you are comfortable.

**Ms Wagner:** Thank you. I am Bobbi Wagner, representing the OPSEU provincial women's committee. At my far right is Diane Roberts, representing the Parkdale Legal Service; Twila Roulston, representing support and custody orders enforcement; and Nick Di Salle on my left, representing OPSEU staff.

The Ontario Public Service Employees Union, OPSEU, welcomes this opportunity to submit to your committee our perceptions and recommendations regarding the impact of Bill 17, amendments to the Support and Custody Orders Enforcement Act.

Our union represents approximately 105,000 public-sector employees in Ontario. The majority, 68,000, are directly employed by the provincial government. The other 37,000 work in various sectors involved in social services, post-secondary education, health, and other public services. Over half of our members, 54%, are women. Many of our members work directly with single-parent families in a variety of ways. OPSEU members employed as parent support workers, PSWs, in the Ministry of Community and Social Services work directly with fathers and mothers to develop separation agreements and support obligations. OPSEU members are also employed as support and court-ordered enforcement officers in the Ministry of the Attorney General and as community legal workers.

Bill 17 will directly affect the way they do their work. Our submission today, to a large degree, reflects their views about Bill 17 and their concerns about how to approach the dilemma of child poverty and the hardships that follow family breakdowns.

**Child and family poverty:** Over the past few years Ontario's social service system has been the subject of several major reviews. In 1988 the Social Assistance Review Committee, SARC, released its milestone report, Transitions. After two years of deliberations and over 1,500 submissions, the committee concluded that Ontario's poor are too often women and children. In Ontario 360,000 children under 18 grow up in poverty. Of these, 205,000 depend on public assistance. Women who separate



or divorce are severely disadvantaged when trying to seek employment or survive on the inadequate support.

The period between 1979 and 1990 saw some important changes to social programs. In particular the implementation of some of SARC's recommendations resulted in increases to public assistance rates. But the shocking fact is that the proportion of women among Canada's poor has not changed to any great extent. The National Council on Welfare reported that: "In 1975, 59% of the adults living in poverty were women. By 1981, the proportion grew to 61%. In 1987, it was back to 59%." The group identified as being most at risk were the single-parent families headed by women. About 57% of them lived below the poverty line.

Despite the fact that more women are moving to paid jobs outside the home, from 53% to 68% during the past 10 years, other factors totally beyond their control have worked against women. "The main factors are child care responsibilities, labour market inequities, and marriage breakdown and widowhood." This is according to the National Council on Welfare. Child-rearing and household work are heavy burdens to carry, especially when little help is available from the non-custodial parent. The lack of affordable day care spots also limits women's access to employment. As a result, the majority of mothers continue to spend many years outside the labour market or in low-paying part-time jobs.

The impact that adequate and continuous support payments have on the wellbeing of children and sole-support families cannot be ignored. A report by the Department of Justice, Canada, in 1988 states that support payments, despite the low amounts, make a significant difference to a family's standard of living and 58% of the divorced and separated women who received maintenance lived in poverty in 1986, compared with 75% of the women who did not receive support payments.

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Receipt of support payments also impacts on the amount of time spent on public assistance. Transitions reported that single-parent mothers who receive support payments, modest as they might be, stay on welfare for shorter periods of time than those who receive no support.

Although Bill 17 addresses the enforcement of support orders, we feel that it is appropriate also to talk about the level of support orders. As the Honourable Mr Hampton stated, "The single most important goal of this new program must be to fight child poverty." We believe that to achieve this goal society must also address the real costs of raising children or our attempt at enforcement of support orders runs the risk of simply enforcing poverty.

A Statistics Canada economist-demographer report from Quebec gives us some idea of the true costs of raising a child. "Depending on the age of the child, the cost of the first child in 1982 was between \$192 and \$533 a month for a low standard of living and between \$250 and \$708 per month for an average standard of living. A second child costs 80% of these amounts."

Assuming that these costs are similar in Ontario and by using the Ontario cost-of-living index, we can estimate the real costs of raising a child in Ontario in 1990. For a low

standard of living it would cost between \$271 and \$750 per month, and for an average standard of living, between \$353 and \$999 per month. A second child costs 80% of these amounts. Clearly, enforcing the payment of support orders will help, but we strongly recommend that an objective process be developed to assist judges and others in setting adequate rates.

We agree that Bill 17 will facilitate both the paying of support obligations and their enforcement. As the minister stated, "Without a change in the way we do business, the problem of unpaid child support orders and child poverty will continue to grow." We support the minister's goals but feel that Bill 17 should be seen as a first step towards a real commitment by the government to support children and families. We would like to see the government look at ways of ensuring that women and children entitled to child support receive it and do not suffer hardship if the man does not pay.

Public maintenance advance program: Under the proposed Child and Family Support Act, a child and mother will receive support payments only if the man has a steady income and if his place of employment is known. Failing this, the family receives no support. We believe it is time for this government to seriously study the feasibility and desirability of instituting a public maintenance advance program.

A public maintenance advance is a guaranteed periodic payment to children whose private support obligations are not or cannot be met. In essence, the payment is an advance on the private obligation, which the state then seeks to collect. Because enforcement of private obligations is not always possible, the maintenance advance system provides a guaranteed minimum income to these children. Public maintenance advance systems originated in the Scandinavian countries and have spread and been adapted to social security systems in other countries. Sweden has the most advanced and comprehensive system. Public maintenance advance systems of one type or another also exist in Finland, Denmark, Israel, Switzerland and New Zealand. The basic aim of the maintenance advance is to provide a guaranteed income to a child suffering economic hardship because the supporting parent fails in his or her obligation. The advance is a right on which the children may count regardless of the behaviour of his or her parents. The maintenance advance is an attempt to raise the dependent family's income to a level above that of the subsistence provided by social assistance and to avoid, as much as possible, the stigma of social assistance.

In a 1983 study of eight countries that have some sort of public maintenance advance system it was concluded that the maintenance advance makes a significant difference to the income of single-parent families. Not only are children cushioned from the effects of the debtor's default, but the maintenance advance also guarantees a minimum income for those children of low-income parents who cannot provide adequate child support.

It is our belief that Ontario's and Canada's women and children need a public maintenance advance system.

Division of assets: We would like to recommend that authority to seize and sell assets to pay support—proposed

section 10a of the act as set out in section 8 of the bill or related legislation—be expanded to include seizure and sale of assets to repay a spouse for any raiding by the other partner of assets subsequent to court orders dividing the assets. That is, following a family court order regarding the division of assets, some spouses, mostly men, have covertly raided bank accounts or other convertible assets. By the time a Supreme Court order is issued and the couple begins to implement the division of assets, many women are rudely shocked to find that the family assets to have been divided have been seriously depleted.

At present the onus is on the aggrieved spouse—mostly women—to pursue civil action to recover the depleted portions. The civil action route is too expensive an option for most women. The result is a de facto loss of assets. It is our belief that the proposed Child and Family Support Act should allow for automatic support payment deductions against a spouse's paycheque to restore the value of family assets allocated to the other spouse.

Private agreements: Part of the duties of a PSW in the Ministry of Community and Social Services is to assist the custodial spouse, usually the woman, and non-custodial spouse in arriving at a mutually agreeable support obligation. Currently the PSW arranges two types of agreements: a separation agreement between married couples or couples who have cohabited, and an agreement for support: terms of settlement for single parents who have not cohabited.

We were informed by our members that presently only the separation agreement is enforceable. The agreement for support: terms of settlement is not enforceable. The couple is required only to make a court appearance and get a court order for support. In subsection 1(2) of the proposed act it states, "and includes such a provision in a domestic contract or paternity agreement that is enforceable under section 35 of the Family Law Act, 1986."

We recommend that both types of agreements developed by the PSW and endorsed by the other two parties be enforceable through this act and lead directly to a support deduction order without having to go through court proceedings, unless custody is an issue. This adjustment will offer an alternative to expensive and time-consuming court appearances and validate the work presently performed by PSWs.

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Labour issues: For Bill 17 to be effective in decreasing the default rate of child support payments, long-standing problems in SCOE and related services must be addressed. It is important to draft new laws to legislate tighter enforcement and to develop new systems to administer the laws. But it must be remembered that in the final analysis people operate the system and the quality of working life of those charged with administering enforcement directly affects the quality and success of their work. Two issues in particular must be addressed for Bill 17 to be at all effective in improving the rate of maintenance enforcement: adequate staffing levels and formal involvement of front-line staff in developing new systems.

Staffing levels: Since their inception just three and one-half years ago, SCOE offices have been perpetually underfunded and understaffed. Staff currently carry case

loads varying from approximately 700 to over 1,000 and increasing weekly. Under the current system it is simply humanly impossible to deal responsibly with clients' needs, and many maintenance orders which could be enforced with proper staffing are not.

Women and children therefore are often not receiving the child support which they are legally entitled, simply due to understaffing. Historic use of contract and short-term contract staff has not dealt sufficiently with staffing issues and has exacerbated a situation of low staff morale and bad labour relations. Staff turnover rates are incredibly high. Our members estimate that only 10% to 20% of the original front-line staff remain in offices which have been open for only three and one-half years.

The financial and human costs of such turnover rates must be exorbitant. We hope, as you do, that Bill 17 will eventually serve to free some staff time and enable SCOE staff to work on more difficult cases. However, the importance of a substantial increase in permanent staff in the SCOE system cannot be underestimated. Recent postings of long-standing unclassified positions is a beginning but we must understand that a commitment has been made only for more short-term contract staff. Unacceptably high case loads will cause more unnecessary suffering, both for SCOE workers and for women and children entitled to and in need of support payments.

In jobs as varied and complex as SCOE jobs, short-term staff are hardly even able to learn the work. Bill 17 will be an administrative nightmare without adequate permanent staffing levels. SCOE staff consulted in the preparation of this brief suggested that case loads of a maximum of 400 to 500 people, after the successful implementation of Bill 17, would help ensure that they could deal responsibly with their case loads. If staffing levels are not greatly increased, little improvement is likely, due to the current massive backlog in the system. We urge this committee to make strong recommendations to this end.

Consultation with staff: It is OPSEU's position that consultation with front-line staff should be an integral part of how work is done, especially when developing and implementing new systems. We understand that the new government also appreciates the need for this consultation. However, consultation on Bill 17 has been haphazard and inconsistent at best, throughout different SCOE offices and related services.

The implementation of Bill 17 would be most successful with formalized consultation and involvement of front-line staff. We suggest that recommendations be made to ensure that implementation committees, including front-line OPSEU representatives, be struck to ensure that those who know best and those whose work will be drastically affected by the proposed changes will have formal, recognized input into the implementation process.

Formal participation in the implementation process will also ensure that a wide variety of concerns that have been expressed to OPSEU in relation to Bill 17 can be addressed. These concerns include security issues, especially during the implementation period; concerns about other health and safety issues, such as increased computer time; changes to the very nature of the jobs in SCOE offices;



enforced quotas such as the current 22% compliance rate in the Hamilton office, and electronic monitoring and other issues which impact adversely on the work of those in positions related to maintenance enforcement. In conclusion, we understand that there is some concern that the wording of the current bill is problematic. But we trust that this committee will ensure that the legislation will be amended as necessary to ensure that it is a sound legal document. Our recommendations can be summarized as follows: (1) that Bill 17 be adopted as a first step towards addressing the issue of child poverty and that the government investigate the feasibility of a public maintenance advance program; (2) that public education go hand in hand with the proposed legislation to ensure greater understanding of the responsibility for adequate child support; (3) that guidelines for adequate support levels be established; (4) that protection of assets in the case of raiding by either partner be addressed through this or other necessary legislation; (5) that adequate permanent staffing be provided to ensure that Bill 17 can be administered successfully, and (6) that front-line OPSEU representatives be formally consulted regarding the implementation of Bill 17 and other issues affecting their work.

**Mr Elston:** There are a couple or three areas where I would like to go, but I think I will probably reflect a little bit on the SCOE operation itself. Is it Ms Roulston who is here from SCOE? Just one other word. We are not able in the committee necessarily to recommend much except that the people from the Attorney General's office I am sure have heard you on the subject of the advance maintenance payment issue. We cannot do that here, but I think we have heard that from two or three other organizations with respect to SCOE. We have heard a number of cases about the frustration which is felt by people who have called both payers and payees under the terms of the amendments that are about to be proposed for this act. Can you describe, Ms Roulston, what your colleagues at SCOE feel currently about working there? I have heard the statistic that only 10% of the originals are remaining. But just give us a sense of what it is like there.

**Ms Roulston:** Okay.

**Mr Elston:** Are you a front-line worker yourself?

**Ms Roulston:** Yes, I am. I am an enforcement representative in the Oshawa branch. Bill 17, we feel, is going to help the ongoing maintenance payments, so we are quite excited about that because we know we can get to a lot of files more quickly. But the concern is with the backlog of orders currently and not being able to get to them on time because of the backlog. That is what the biggest concern is, because we are already so overworked in implementing this new bill, how is that going to affect our already overloaded case load? And without adequate staffing, we feel that Bill 17 would become a priority, of course, to get these orders enforced on time and to get the moneys coming in, but what about the other 14,000 that we have in our office that we are still currently trying to enforce? So I think the position of adequate staffing really needs to be addressed.

**Mr Elston:** Is it fair to say that the ones that are in arrears longer are the tougher pursuits for an enforcement officer, or is it just that you have not been able to get to them?

**Ms Roulston:** The likelihood is that we are not able to get to them.

**Mr Elston:** So some of them might very well be caught up quickly if you could just get there.

**Ms Roulston:** That is right.

**Mr Elston:** Okay. You have mentioned the ratio of about one enforcement officer to 400 to 500 cases. I presume that is on the basis of sort of an equal distribution of the good, the bad and the ugly, so to speak, in terms of cases.

**Ms Roulston:** Right.

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**Mr Elston:** What percentage of the cases now that you handle could be described as good in the sense of, does not take much pursuit, or then there are tougher ones and then the ugly are sort of in the category where no matter what you do you really are in a tough battle trying to find where somebody is or trying to find out what the new job is or all that sort of stuff? Can you give us an idea?

**Ms Roulston:** An idea? It is all so varied. I cannot really give you an exact statement on that but I can check into that and get back to you on it.

**Mr Elston:** Just one other question, then, with respect to SCOE. I know that during our time considering how we could make it a bit of a better place to work in the sense of trying to free some staff time to get to the tough cases, which, I think, by and large, is agreed upon as being the ones that you want to be able to put the staff time towards, there was an indication that there would be, at some time during the course of the registration of a payment order, a long period of compliance which would allow the case to be kicked out, I think was the term that was being considered—in other words, that you would stop having SCOE enforce the good complying payers after a while. Any sense that that would be beneficial in terms of staff time, in terms of the pressure that staff would feel on the job?

**Ms Roulston:** I do not quite understand what you are saying. Could you repeat that, please?

**Mr Elston:** Okay. If there is an order in and you have a particular person who has paid for a period of, let's say, two years, without any problem, it would seem in some cases that if there is a good compliance record they could fall off the administrative side of the SCOE activities, so to speak, and go about their business on their own. That would leave, again, staff to pursue the more difficult cases, which would mean that instead of floating between 400 and 500—I think that is the optimum that you are advocating; I do not know what your case load is now, I guess I should ask that—that would tend, then, to leave the easy cases away from responsibility and, in fact, let you deal with the more difficult and almost the impossible on some occasions.

**Mr Fletcher:** No. There is no such thing as an easy case.

**Mr Elston:** Well, there is. You do not have to answer it. I am not concerned. It was just a question of whether the easy cases should be allowed to be—

**Ms Roulston:** —to just be put aside and work on the hard cases.

**Mr Elston:** Yes, and as long as they were in compliance they would not reappear. Could you just answer this last question and I will pass the floor over to someone else? What is your current level? You have suggested that 400 to 500 might be a semirational number. Do you know what your load is now?

**Ms Roulston:** My personal case load?

**Mr Elston:** Yes.

**Ms Roulston:** I am monitoring, right now, 969. That is just me alone and I am part of a team. We currently have three members that are permanent staff. Well, two are permanent, one is contract. Our team's case load is 3,000.

**Mr Elston:** And how many are good cases, if I can describe them as that—easier? I am not saying any are easy, but there is a level of ones that are easier to deal with, and then there are ones that are more difficult.

**Ms Roulston:** That is really hard because every case is different. I do not really have a percentage to give you at this time, but it just depends on when you open the file. Some of them are easy and some of them are not.

**Mr Elston:** Okay, thanks.

**Mr Carr:** I had a question for you as well, having been on the front lines in a task that, I think, is probably very difficult, especially when you hear of the 969 cases. I was just wondering if you can enlighten the committee on the reasons why there is not payment. There have been various reasons why there is not payment: sometimes people do not want to pay, or we have heard that they maybe cannot pay, and then there is access. What has been your experience as the front-line person, seeing this every day, of what some of the reasons would be where somebody is not paying and is in default?

**Ms Roulston:** Again, there are various answers to that. Every case is different. It could be for a number of reasons. Maybe just not employed at the time. Like I said, mostly it is just us not getting to the files.

**Mr Carr:** It is not what? Getting to the files?

**Ms Roulston:** Being able to.

**Mr Carr:** Oh, meaning you not getting to the files. Yes.

**Ms Roulston:** Right.

**Mr Carr:** But of the ones you do get to—you know, what we are struggling with is that there are so many different reasons and we have heard various groups and it is very complex, and I was just wondering, and I know it is very difficult to do, but are you able to put any numbers to it in terms of percentages? Is it people just walking away, what percentage fights over access, what percentage is it that the person just cannot afford because of what the payment is?

**Ms Roulston:** No, I cannot put any percentage on that, I am sorry. Like I said, I just monitor my own case load. There are just various avenues for various reasons, and some like you mentioned, but I do not have the statistics.

**Mr Carr:** If you do not keep that, I guess that is probably the reason we cannot get them because nobody really keeps it. It is only sort of a guess from what you have done from your own experience.

**Ms Roulston:** I think they have statistics at my head office, but I do not personally so I cannot comment on that.

**Mr Carr:** I guess that is why we probably cannot get them. My one last question: With Bill 17 you talked about this tremendous case load. Do you see having to reduce the staff in your area if this comes about?

**Ms Roulston:** No, no. We would have to increase.

**Mr Carr:** Even with Bill 17?

**Ms Roulston:** Yes.

**Mr Wessinger:** I would just like to comment on some of the issues raised. First of all I would like to thank OPSEU for making their presentation today and to assure them their front-line staff will be consulted with respect to the implementation of the legislation.

Second, I would like to indicate that there is the additional \$2 million of resources that is being provided to hopefully help clear up the backlog.

Third, with respect to the question of enforcement of separation agreements and paternity agreements, both these agreements are now enforceable without the necessity of going to court. A statement of arrears is filed along with the agreement and then SCOE can take the necessary steps to enforce the collection of those arrears or payments that are owing.

With respect to the question of guidelines, presently there is a federal-provincial committee studying the whole aspect of support guidelines, and that report is expected some time this year.

**The Chair:** I had one question for clarification. We have had a number of deputants discussing mediation services. On page 8 of your brief, at the top, you mentioned PSWs. The services you are talking about here seem to be something like mediation. I am wondering, is this custody and support or is it support alone?

**Mr Di Salle:** Well, they do mediation, but if it comes down to custody what they are normally doing is assisting the parent in the court hearing, almost as a paralegal you could say. But they do not do the custody in private agreement; they will do obligations and—

**The Chair:** So this is a service from the Ministry of Community and Social Services but it is primarily for financial support.

**Mr Di Salle:** That is correct. It is basically to work out an agreeable amount between both parties. If it breaks down then they follow up with SCOE and so on.

**The Chair:** The reason why I mention that is simply because we have had a number of deputants mention mediation and we have not—



**Mr Elston:** Mr Chair, might I ask for some more time? I notice that there are some members of the government caucus who would like to speak. I know Mr Kwinter from my caucus would like to ask a few questions. This is an important group of folks, and if that is agreeable with the rest perhaps we could just slightly extend our hearing time with them.

**The Chair:** Well, does that request—Mr Carr, Mrs Mathysen? Mr Elston is requesting additional time.

**Mrs Mathysen:** That is fine.

**The Chair:** Okay, with the indulgence of the witnesses perhaps we could extend some of the questions for another 10 minutes. We had another two more questions from the government caucus and back to Mr Elston or Mr Kwinter.

**Mr Morrow:** First of all, I would like to thank you for taking the time to come here today. I just wanted to expand on the labour issues. The staff increasing: How many more staff would you like? I understand that you would like to obviously cut the case load in half, so I guess I am asking is: What staff level are you now at? You would obviously like to double that, and you refer to a heavy staff turnover. Is that because of the case load?

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**Mr Di Salle:** Well, the staffing level is problematic when you start working out the case load sizes. From talking to our people at SCOE, the 400 to 500 figure was one that they felt would be manageable. It is something that needs to be reviewed periodically as legislation changes or as circumstances change. But the total number of staff that would be required to run the system, we do not have those figures with us today, but using the case load size that just becomes arithmetic.

**Mr Morrow:** Okay, thank you. I would also like to say that I do personally also believe that the direct involvement of the staff is the only way to implement Bill 17 and implement it correctly.

**Ms S. Murdock:** Just a couple of questions. I presume that the staff turnover, a lot of it is stress, in Workers' Compensation Board claims that are not allowable yet. But what I was particularly interested in—

**Mr Elston:** Was that an announcement?

**Ms S. Murdock:** Well, our Workers' Compensation Appeals Tribunal allowed one last week.

Guidelines for adequate support levels, that is what I am wondering about. Are you suggesting that if a spouse earns, we will say, \$50,000 and there are two children involved, you would set a limit? Is that what the recommendation—

**Mr Di Salle:** No, that is not what we are saying. We are saying there should be a floor—

**Ms S. Murdock:** A minimum.

**Mr Di Salle:** A minimum, yes, where that is realistic in the cost to raise a child today in Ontario. And that is where the public maintenance advance system comes into play to a great extent, in that it guarantees that minimum to the child and to the family. Right now, from talking to parental support workers and SCOE workers, there is no

really clear instruction or guideline as to how to figure out what is an appropriate amount. It is basically an ability to pay as opposed to what the child and mother require.

**Ms S. Murdock:** Well, to raise a child, there were a couple of presenters here this week saying that it is very expensive, and your presentation explains that quite well in terms of cost. But in terms of the person who is earning \$20,000, and there are many male jobs out there that do earn that, and the person who is earning \$70,000, on the basis of what you are suggesting, guidelines for adequate support level, there would be a minimum that both would have to meet. Is that what you are suggesting?

**Mr Di Salle:** That is basically what we are suggesting, yes.

**Ms S. Murdock:** Okay.

**Ms Wagner:** If I might interject: I know someone recently, within the last two years, who had a support order for \$10 a month. Now that, in today's world, does not buy very much, so there is a need for a minimum guideline.

**Ms S. Murdock:** Oh, yes. No, \$10 a month is a slap in the face, I would say. I know what I would probably tell them to do with it. So I understand that. The person has the responsibility for his children, regardless; that is a given. I am just wondering how they can live, and at the same time if the minimum is set, that they have to support both. I do not know how that would work. I would have to think about it, okay?

**Mr Kwinter:** I just have one question. I doubt whether OPSEU can answer it, but maybe the people from the Attorney General's office can. You talk about the feasibility of a public maintenance advance program. Do you have any idea what the net cost would be on such a program?

**Mr Di Salle:** Well, when we talk about this issue with people in the community we have to look at the costs in a variety of ways and not just money. We will have to look at the social costs of not acting, also. There are 360,000 children whose future depends on adequate support. So we have to take that into consideration. We have not done an exhaustive study of how much it would cost to implement in Ontario or preferably in Canada, because a national program is what most other countries run. But it is our belief that the cost to the nation is even greater in not acting and allowing hundreds of thousands of children to live in poverty perpetually, for years and years.

I worked for 12 years in family benefits myself, and I saw that. Sometimes for 10 years I would see the same family, and the children would suffer enormously. And the next thing you know, they would be dropped out of high school and on the rolls themselves. So there is a tremendous cost in not acting.

Our proposal is made in honesty to see if we can basically attack child poverty. And we took the minister at his word when he was talking about eradicating child poverty, and we think the public advance system is one way of attempting that. It also follows from a lot of SARC's recommendations in regard to the child benefit that it was advocating. So in one way or the other Canada and Ontario have to address child poverty, regardless of the cost.

**The Chair:** Mr Carr, do you have additional questions?

**Mr Carr:** Yes, actually I do. One of the questions I have is going way back to page 3 where we did talk about eradicating some of the poverty for children—and women as well. I was just wondering if you have any report or statistics on some of what you would like to see in terms of improving education and skill levels. One of the ways to do that is to give women, and certainly children as they are growing up, the skill levels to be able to compete and get out of poverty. And I was just wondering if you have anything on that, hard copies or reports, that I could get, or any thoughts here on how your union sees that process taking place.

**Mr Di Salle:** I am sorry. Are you talking about what role education plays in this?

**Mr Carr:** Yes, in terms of helping with the poverty, because, as you said, the kids drop out of school for whatever reason and then, of course, the next generation cannot get the jobs—

**Mr Di Salle:** The only perspective I can give you is that a lot of the children in these families feel tremendous stress when they see their parents are not able to meet the expenses of the family. So a lot of them take it as it is not affordable for that particular individual to continue in school. In my experience as a family benefits worker, I talk to a lot of teenage kids who are simply saying, "I can't sit back and watch my mom and my brothers and sisters living like this just for me to go to school." So they go out and work and try to assist the family. That is what I have seen. Whether our educational structure is adequate or meeting the needs of Ontario is another question, but as far as child poverty, I see it from that perspective: that children are at a certain age recognizing the difficulty of the family and withdrawing from school in order to support the family.

**Mr Carr:** And one last question. Were you consulted on this bill since the new Attorney General has come in? Have you had input with him?

**Mr Di Salle:** Consulted in what way?

**Mr Carr:** Discussions with him. Being able to sit down with him.

**Mr Di Salle:** The Attorney General, no. I met with a few of the staff at the Attorney General and some of them are here today.

**Mr Carr:** So you mean you have been involved in this—

**Mr Di Salle:** Some clarification on the bill, yes.

**Mr Carr:** Okay, good, thanks.

**Mr Di Salle:** Let me just make one comment to Mr Wessinger. About the two forums that you were talking about: I spoke just recently to people in a parental support unit, and if what you are saying is true the message has not gotten down to that level, because even yesterday they reaffirmed to me that they cannot enforce the order.

**Mr Wessinger:** Oh, perhaps I should clarify. This is new in the bill. We will provide for that.

**Mr Di Salle:** Thank you.

**The Chair:** A very informative presentation and it is very important to hear from square one, from the front line. Thank you.

#### ONTARIO ASSOCIATION OF FAMILY SERVICE AGENCIES

**The Chair:** We now have a presentation from the Ontario Association of Family Service Agencies. Presenting we have—you have the document forwarded to you—Miriam Mayhew, the executive director, and Julie Foley. Would you please mention your names into the mike? You have been here for a little while, so you know we have approximately half an hour to divide up as you wish. Please feel free to start when you are comfortable.

**Ms Foley:** All right. My name is Julie Foley. I am the executive director of the family service agency in Sarnia. I sit as a volunteer member on the advocacy committee of this Ontario association. And this is Miriam Mayhew who is the executive director of the association based here in Toronto.

The Ontario Association of Family Service Agencies, which we fondly refer to as OAFSA, represents 48 member agencies across the province of Ontario. Its mission is the leadership, reinforcement and support of its member agencies' endeavours to strengthen, preserve and protect personal and family life. Member agencies provide counselling and support services to both individuals and families who request assistance. We see at first hand the pressures experienced by people encountering a variety of social problems, including those related to marital breakdown and poverty.

#### 1100

We have been on record for some time as an advocate for strengthening the enforcement of support and custody orders. We have attached to our brief a copy of a letter to former Attorney General Ian Scott in June 1990. We have pointed out that the compliance rate of 35%, at best, which SCOE has achieved is disappointing and unacceptable. We are aware that the results of non-compliance cause poverty and hardship in single-parent families, usually mother-led families.

Further, non-compliance creates a greater need for public assistance than might otherwise be the case. A report published in 1990 by the National Council of Welfare, *Women in Poverty Revisited*, points out that 52% of previously married single mothers and 75% of never-married single mothers live below the poverty line. Single-mother-led families have an income at 61% of the poverty line, and although this group makes up only 3% of the population it bears 17% of the poverty gap. The poverty gap is the difference between what people actually receive as income and the poverty line.

The same report points out that support payments make a crucial difference to the financial wellbeing of single-mother-led families. A total of 58% of the divorced and separated women who received support payments lived in poverty, compared with 75% of those who did not receive support payments. Noteworthy, of course, is the extent of poverty among single mothers generally, supported



or not by their ex-spouses, and their consequent need to claim income support through general welfare assistance and FBA.

In Ontario, single mothers on welfare suffer additionally since their welfare entitlement is deducted dollar for dollar for any money they receive in support payments. Women gain nothing from support payments while on welfare, and it is important to recognize the interconnectedness of various pieces of social legislation. This institutionalization of poverty should be considered alongside changes in enforcement proposed by Bill 17.

Support orders are made by the court according to a variety of formulae. Ideally the real costs of supporting a single-parent-led family should be a factor in the calculation. Unfortunately, this is not usually the case. What customarily happens is an award is granted based on what is left over after the non-custodial parent's costs are covered. This notwithstanding, we are aware that even inadequate support payments, if made, are better than nothing, and we applaud the efforts made in Bill 17 to strengthen the enforcement of support orders. Automatic deductions of these payments at source will go a long way towards ensuring that single parents and children receive the financial support ordered by the court. Further, automatic deductions lift the payment of support orders to the level of social responsibility rather than individual arrangements.

We hope that these support deduction orders will be truly portable—that is, trackable—as this will deal with the problem of debtors changing employment. We urge that the enforcement agency use all of its powers to locate ex-partners who move.

We are concerned about the plight of single custodial parents whose ex-partners are self-employed or out of the province, and hope that appropriate arrangements will be made to ensure that their needs too are addressed. We appreciate that it is difficult to tap the income sources of self-employed persons but we urge that enforcement capability be strengthened for these cases. We also hope that arrears will be collected with interest.

While we appreciate the intent of the provision allowing opting-out, we hope that there will be some process which protects women from undue pressure to agree to an opting-out arrangement. We note that women from abusive relationships particularly may be vulnerable.

We are concerned additionally about the time frames within which collection may take place, knowing that at present SCOE's procedures are long and cumbersome. For this reason we remain committed to the principle of the provincial government's up-fronting of support payments to single parents. This would have two benefits:

1. The needy family would be promptly provided for and the problem of collection would be that of the government's.
2. This would be a recognition that support payments are indeed an obligation, a public debt, and that it is in society's interest to maintain income security for families. Support payments are part of income security, and income security is clearly a responsibility of the province.

**Mr Carr:** I just had one quick question and it relates to some of the questions that, as a matter of fact, I asked just

before, if you were here, to one of the ladies who was working on the front lines, about the reasons for non-compliance. I was just wondering in your travels if you had any thoughts and again, the question was, there are various things that people do not think there is a responsibility, there are some that cannot pay, there is the access question, and as the lady before you said, there is even more than that. There could be hundreds. I was just wondering if you would give this committee some sense of what some of the reasons are there, because as you know, we have brought in the question of poverty and so on and I was just wondering if you had any thoughts in that direction.

**Ms Mayhew:** There are a lot of reasons why usually men fail to pay these debts, and certainly we cannot discount that some men are also poor and that child support payments are a load for them to bear as well. However, in our discussions with SCOE about this they have certainly confirmed what is clearly our experience, which is that this is a particular form of debt to which high emotions are attached and many people who are very, very good debt payers or bill payers turn out to be very, very bad support-order payers because of the high level of emotion that runs through this issue.

Marital breakdown and all of the associated emotional uproar that goes with it is certainly one of the factors that results in people being unwilling to pay these bills. While one can have some sort of understanding of how very emotionally people feel about these debts, it is none the less our position that this is a public debt and a social responsibility.

**Mr Carr:** What I was getting at is, the people from, for example, Dofasco—and I think we all agree that the children should come first before your Visa, your car or anything else—are saying that 70% of the people are struggling to make these payments because of the economic pressures, and Lord knows, even with Dofasco and steelworkers layoffs coming, it could even be worse.

So what we have got is we want to make sure that the priority goes to the children instead of maybe the car payments or whatever. So I think that is what we are achieving. But what they are saying is that there is not enough money there in a lot of cases, and I was just wondering how you see that.

The group before you talked about maintenance programs where the province and/or the federal government would kick in to help the children, and I was just wondering if you see that also as a measure. In other words, Bill 17 will not help and I think the words that everybody is using will be a good start. How much of a start are we going to get with this in your estimation, in terms of getting money to the children?

**Ms Mayhew:** We feel that it is a very good start in getting money to the children because it does involve this automatic deduction. We have mentioned that in some cases it seems not to be too applicable and particularly in the case of the self-employed. In terms of the struggle that usually non-custodial fathers encounter in paying their bills, with all due respect, it is unclear to me why that should be something that would elicit more sympathy than

the struggle of the mother who has not only the responsibility of supporting herself but also her children.

**Mr Carr:** I do not think it is a case of whom we are more sympathetic to; it is just that I think what this group is trying to do is get a little bit of a sense of fairness—that we are not trying to hurt one or the other. It is, as you know, a very complex problem.

The other last question I have got is regarding the ability to opt out and pay on your own. I know that various groups have said that that does not work because we are trying to show that it is not a stigma to have child payments. From your experience is it better in terms of counselling if you can get an agreement to say, "Yes, I will pay you on your own and this amount per month," rather than, and I know there are quite a few unfortunately where there are fights and angers and so on, but those groups where we can get above and beyond that, would it be your thought that they should then be able to do it on their own and work the payments out? One at a time, eh?

**Ms Foley:** While I understand where some of that is coming from because there are many responsible parents, either mothers or fathers who do pay support payments regularly, we would have a great deal of difficulty in acceding to very much opting-out because there are times when people have good intentions but the follow-through is not appropriate. And if there is good intention then there is no stigma in remitting it through one source rather than another. So for those people who are going to be responsible, the remittance through the employer should not be a problem. We just know too many people over and over again who do not follow through with support payments because it means a change in their standard of living.

1110

**Mr Carr:** What we are looking at is, we just heard of the tremendous case loads and we are saying that if we try to do it we do not want it to end up being like the rent review board, which is a great idea but it is backlogged. And what we are saying is that the kids who really need it might be affected if we are going to put people into the system that might otherwise pay, and we heard 965 cases per person and so on. And I was just wondering if we left those out, would we get more money to the kids, which is really the goal of this?

**Ms Mayhew:** We think we need to go back to our principle which is that the payment of child support orders is a public and social responsibility. It is not a question of being a nice guy, it is part of one's responsibility as a citizen, and in many ways it can be compared to paying one's income taxes, in our view.

Now, I remit, I pay my income taxes very, very regularly but I do not see anybody telling me that as a result I do not have to have them deducted from my paycheque because I am a nice guy. By the same token, we feel that as a social responsibility and part of the expense of being a parent, there would be very little reason to make exceptions and have opting-out arrangements.

**Mr Carr:** So it is not helpful, then, in terms of keeping the—and I cannot say the relationship going, when you are getting divorced or separated, but having a good willingness

to pay does not help keep some type of good feelings together, then? Because my feeling is that if you can work out a payment with somebody then you are showing good faith, and even though you are getting divorced or separated or whatever, that there is some goodwill there and that you can still part with some type of good feelings, because ultimately that still will come back to the kids; if there is bad feeling between the parents.

**Ms Mayhew:** If there are going to be good feelings I am not sure that this is going to be a variable that will affect it either way. If paying child support payments either by handing over the cash or through payroll deduction is going to cause ill feelings, then it is going to cause ill feelings. I am not sure that it is going to be a crucial variable.

**Mrs Mathyssen:** Yesterday we heard testimony from the Law Union of Ontario. At that time the statistic raised by the Dofasco payroll association about 70% of the defaulters in child support being unable to pay was refuted by them. They said, in fact, the standard of living for women declined after separation and the standard of living for the male defaulters increased substantially. Would you concur with the observations of those women from the law union?

**Ms Foley:** That certainly fits very well with what we see every day in our practice where women are affected substantially by a lowering of their standard of living, the women and children. I suppose I would be careful about saying that a great number of men's standard of living increases, but at the very, very least women and the children suffer a much more dramatic decline in standard of living.

**Mrs Mathyssen:** And do you believe that in the cases of many of the defaulters, as they indicated, it is a matter of not being able to pay or would you suggest there could be other reasons?

**Ms Foley:** Well, I think one would have to check the definition of "ability to pay." If they are choosing to maintain a certain standard of living then that is when one might suggest that they have an inability to pay. It is a choice, it is a choice about where you make your cuts and where you make your changes.

**Mrs Mathyssen:** In other words, to put the children before the pay-TV, the new car, the—

**Ms Foley:** That is what we believe firmly.

**Mrs Mathyssen:** Okay.

**Mr Mills:** A succinct presentation, I enjoyed reading it. One thing that puzzles me is, on page 4 you mention that, "We hope that there will be some process which protects women from undue pressure to agree to an opting-out arrangement." We had some people here yesterday that brought that issue up and thought that maybe there should be some clause in the bill about undue harassment or things like that. I have a little bit of difficulty how we would enforce that because, if I am sort of telling my wife, you should opt out or else I am going to do certain things to you and she runs off and makes a complaint and then the authorities come back to me and I say I do not know



what she is talking about, how are we going to protect people from opting out and how are we going to enforce if we consider putting in some amendment reflecting the harassment of a woman? Would you have any ideas on that subject?

**Ms Foley:** Yes. I would be very reluctant to see any amount of opting out. I have a great deal of concern that even where there is not any abuse in a relationship, there may be good intention, but those choices along the way about whether I pay for my new car or my new colour TV versus, well, I can just let the support payment go for one more week, that will happen too often. I personally would not like to see very much opting out at all. When some of the comments have been raised before that if we allow some opting out perhaps that decreases the case load, I am suggesting that if we allow any opting out and it turns out to be faulty, and the parent charged with paying support does not, it ends up costing us more in staff time anyway to go chasing. So I would be reluctant to allow opting out at all.

**Mr Mills:** So what you would suggest is more, what shall I say, difficulty to opt out, making it much more difficult to do that.

**Ms Foley:** Yes.

**Mr Mills:** Is that your recommendation?

**Ms Foley:** Yes.

**Mr Mills:** Thank you.

**The Chair:** We do have some extra time here. Mr Wessinger first and then Mr Kwinter and Mr Elston.

**Mr Elston:** Why do we have extra time?

**The Chair:** Because the presentation was short. Mr Wessinger and Ms Murdock.

**Mr Elston:** Okay. I have some questions, just in case you think you have a whole lot of extra time, since our caucus has not started asking questions yet.

**The Chair:** The amount of time that is available for questions is larger because the presentation was shorter, Mr Elston.

**Mr Wessinger:** I would just like to thank you for your presentation and I would like to assure you that the ministry is looking at ways of extending the program's ability to trace and locate absent payers. We realize that is a very serious problem.

Interjection.

**The Chair:** That is a good idea. Thank you, Mr Wessinger. Ms Murdock.

**Ms S. Murdock:** Actually, my colleague and I have not discussed this because the whole issue of not allowing opting out—I mean, frankly, I do not even think I would go with the four months allowable, in truth. One of the things that actually the ministry people told us the first day, I think it was, was that there is constant movement from the 70% collectables. Although you may have a good payer for a period of time, some difficulty arises or whatever and then that person ends up into the—so that it is constantly changing. As a consequence, the opting out, just to carry on to yours—I know I am not asking you a question

but I am making a comment about—to continue on what your argument is, because I think it reinforces what you are saying.

I just want to compliment you on the succinct presentation and the clarity of this and I really enjoyed it. Thank you.

**Mr Kwinter:** I would like to pursue a concept that is outlined on page 4, and that is that support payment obligations are a public debt. Could you explain why you feel that support payments are a public debt?

**Ms Foley:** We feel that they are a public debt because if they are not paid then, number one, the parent that is custodial, usually the mother, may very well end up on public assistance. Second, in a broader, more global perspective, we feel that in terms of the benefit of children, we as a society profit and benefit in a general way if children are properly cared for and given the privileges and the care to which they are entitled. So in that kind of way it is a public debt.

**Mr Kwinter:** Well, I would like to suggest that—I have no quarrel with the intent of what you are doing, I just do not see how you can possibly tie one to the other. I think they are two separate issues. We have a welfare situation where people, regardless of whether they are getting support or not, are entitled to some kind of assistance. My colleague and I were just discussing, to take it to rather extremes; let us say that you have a rock star, an athlete, a very, very successful businessman who has a marriage breakdown. In their settlement they agree to give hundreds of thousands of dollars a year to a spouse and to their children and they default. Are you suggesting that the state would pick that up because it is a public debt?

1120

**Ms Foley:** Those kinds of extenuating and unusual circumstances, I think, would have to be dealt with in the sense of whether we provided for a floor and, if you wish, we could certainly speak about providing a ceiling as well. I do not think we would be talking about requiring the state to cough up that sort of settlement. That would not be, I do not think, in the course of what we were suggesting.

**Mr Kwinter:** Well, then, let's take another situation. You have a group of taxpayers sitting in this room and out of their tax payments a certain amount is allocated by governments, whether it be federal or provincial or municipal, to assistance for various causes. What do you think, as a taxpayer who, over and above the general allocation of welfare payments and the welfare system, is asked to pay his or her share of someone's non-support payments?

**Ms Mayhew:** I think as a taxpayer I would have every expectation that the government fulfil its responsibility at reclaiming that money. We are talking about upfronting the money which is reclaimable. And if the government has a problem reclaiming that money, that is the government's problem. I as a taxpayer would say to the government that I would like them to clean up their act and get that money back, because this is an upfronting of money on behalf of women and children, of money that is owed by another individual taxpayer and who should be expected to pay it.

**Mr Kwinter:** Let's just pursue this a little further, if you do not mind. I want to spend just a bit of time on this. I think the basic problem that I have is your presumption that when a court order is made the onus really transfers to the government; that once that court order is made, it is the government's obligation. They have to do their best to collect it, but if they do not, they must pay it. In fact, the court is really saying to the government, "Now you have this obligation to pay it. Good luck in collecting it from the debtor or the payer but if you do not, tough," as opposed to saying to the debtor, "This is your obligation and you must pay it." That is where I have the problem, where you say that everyone is entitled to income security.

Then I suggest that maybe we should be looking at a no-fault system. Let's eliminate, let's stop this charade of having these hundreds of thousands of cases; let's eliminate that. Let's just say, "If your marriage breaks down you are going to get X amount of money from the state for your children." Let's not go through this whole situation of trying to track these people down and go through all of the truly gut- and heart-wrenching stories that we have heard here, where people have come in and said, "We have these problems. We cannot collect. And I have lost my home. I have done all of these things." Why do we not just eliminate all of that and just, as they say, cut to the chase and say, "Once the marriage breaks down you are entitled to X number of dollars to support your children and to support yourself."

**Ms Mayhew:** It is clear that the government has accepted some responsibility for ensuring that support orders, when made, are enforced. And I am certain if the government could provide a perfect record of enforcement that we would be happy to drop this part of our submission, saying that it was unnecessary. It is because the perfect record of enforcement has not yet been attained that this is contained within our brief. The question of whether or not the government should have a role or responsibility in enforcement is back to a first principle which I think has already been established. **Mr Elston:** Just sort of one line again. It talks about the substantial nature of the difficulty of poverty with respect to women and children in broken arrangements. I presume that you would advocate, or could advocate, that in terms of the assignments that are now taken by the Ministry of Community and Social Services, that those should be at least suspended until the women and children receive enough money to take them at least to the poverty line. That seems to be a benchmark area. As it is now, whatever you get paid, it is a dollar-for-dollar reduction and—I do not want to put words in your mouth but I presume that you would probably take people at least to the poverty level before the government ought to reduce their payment level. Would that be a fair assumption?

**Ms Foley:** Yes.

**Mr Elston:** Because Monty and I were really intrigued by the concept, which is not an unfair one, in the sense you like to see people having the support that is required—except that this one variation of the well-to-do would put a substantial burden on others, we would say—how do you determine at what level the advance payments

would reach? Would you develop a formula based on location of residence, number of children, types of disabilities?

**Ms Foley:** Certainly the welfare system has the capacity to do much of that now. There are shelter allowances that vary from one community to the next. There is a variation, of course, of the number of dependants. I think that is not a concept that would be very difficult to develop given some of the baseline funds that we have.

**Mr Elston:** Presumably, though, we would have to make sure that the support system was augmented. SARC is one area in which there have been some recommendations obviously and which, I am sure, you are well aware of, but we would have to be pretty well assured that there was substantial augmentation of the amounts to at least the poverty level which, again to me, does not sound like a fair place to stop but at least is a first step, if I could arrange in that way.

**Ms Foley:** Yes, it is a reasonable first step. There would certainly have to be the kind of arrangements that, if someone literally left the country and made enforcement next to impossible, then there has to be a renegotiation. If the support order provided for a substantial amount of \$5,000, \$6,000 or \$7,000 a month, and the person who was paying support was truly untrackable, then there has to be a renegotiation. I do not think we would expect the province to automatically pick up a very, very generous support order that is well beyond some basic social assistance.

**Mr Elston:** Just one other question. We are getting a little bit of conflicting advice on the issue of the opting out, the consent opting out.

I pursued a series of questions yesterday with one of our groups that have made presentations, I think it was representing the law union, it may have been them. At least someplace on the record yesterday there are questions where I had suggested that maybe there was a possibility that coercion, possibly suffered by particularly abused spouses, would be best eliminated if there was no option whatsoever. The reply was, from them, that that removed all possibility of choice and made it so that the spouse had no decision-making power or authority, control over their future destiny. So while they recognized, in fact advocated, some problems existed with respect to a consent order possibility, they did not want to remove it.

Can you help us? I know what you just said a little bit earlier, but can you help us with that side of our dilemma when we get conflicting advice from people who are working on the front lines but in slightly different capacities?

**Ms Foley:** Certainly I appreciate the feeling that one was left with if there is a sense of choice and some option about it. I think if we begin to paint it in the same colours as other responsibilities, such as income tax, it does not become a matter of "you have no choice," it just becomes a matter of "this is the way that it is." I think we do have to promote that attitude—

**Mr Elston:** No, no, I understand that line, but this is with respect to particularly the opting out and the issue of whether you would prefer this committee to advocate the removal of all choice in terms of that consent or not. It has



nothing to do with comparing it and choosing to pay Visa or the television bill or whatever it might be, but it has everything to do with the psychology of helping a person again reassert control over his own future.

1130

I took it from what was said to me in my questions yesterday that part of the first step of taking control of one's future is being able to make a decision, and maybe by just refusing any access to a choice in the early going would be not an insurmountable but it is certainly a problematic commencement to a person's going on his own.

**Ms Mayhew:** I am very sympathetic to the notion of allowing people to have choices. Having said that, however, our current system is one in which there is quite a wide range of choices to whether or not—

**Mr Elston:** Sure.

**Ms Mayhew:** —apparently, as to whether or not men pay their support payments, and we see that in at least 75% of cases they choose not to make their support payments. I think we have to be guided by the empirical data that we have, that where you leave these sorts of choices, the choice not to pay is often made.

**Mr Elston:** This has nothing to do about that; it is just the issue—

**The Chair:** One last question.

**Mr Elston:** No, I will stop.

**The Chair:** I would like to thank you very much for your presentation. Obviously it engendered a lot of discussion. Thank you.

**Ms Foley:** Thank you.

**The Chair:** Before we start with the next presenter, I would just like to make mention of the fact that our schedule for this afternoon has been lightened slightly in that we will not be starting until 2 o'clock. The witness at 1:45 will not be appearing.

MRS PAUL DEMETER

**The Vice-Chair:** I would like to call upon Anne Demeter, please.

I would like to welcome you to the committee hearings and remind you that you have 15 minutes, and you can use that whichever way you wish. Go ahead.

**Mrs Demeter:** Mr Chairman and members of the committee, it is sincerely appreciated that you have invited the people to express opinions on Bill 17 as it affects the administration of justice.

I am happy to be able to say, in good conscience, that I have never been summoned to court, but in the past four years I have involuntarily spent an excess of time in courts from Osgoode Hall to Chatham to audit what takes place in our halls of justice. If it were a natural inclination to be good which has kept me from the clutches of the law, what I have observed has made me resolute to be very, very good. In fact, my experience with judges, crowns and lawyers of varying degrees of competence seemed so weird to my sense of integrity that I thought I might be losing my critical judgement.

Two years ago I enrolled in a government-sponsored course in family law and, to my pleasure, was able to maintain an average of 95%. At least in reading it the law is reasonable; it is when it is in practice distorted by social and political interpretations and influenced by high-decibel groups that it is an ass.

The most violent justice body in family law, SCOE, formerly known as support and custody orders enforcement, is now known as support and custody orders enforcement branch. One wonders how many think-tank hours and how many dollars were expended in making this astounding change. Its administrators, however, still call it SCOE and nothing has changed. So SCOE must go.

A good omen in the 6 December announcement by the Attorney General is that he did not mention SCOE, and neither would I were I in his shoes. Bullet-proof glass separating clients from staff, electronic locks and screening devices, false addresses on letterheads, and a single 800 phone number which answers four questions that nobody asks do not inspire honourable mention.

Will Bill 17 reduce the frustration and anger of those already reeling from divorce or separation and burdened with obscene legal fees? Does it guarantee fair treatment for those, like myself, who have lived within the law and respected their family obligations?

Despite the statistics showing the numbers of men and women who use money and children as instruments of punishment, we must remember they are far outweighed by couples who do not. Why should these self-disciplined people be lumped together with the slackers? Is this not in opposition to our legal system which assumes that one is innocent until they catch one? I believe this government garnishee of wages could be challenged in the courts. We note that two groups are excluded, the first being dentists and doctors. Are their insurance companies more honest than a loving parent? And the self-employed, why are they protected?

I noted the gulf between the law as written and as acted out in the courts. Last July I took the bizarre step of picketing the courthouse in Sarnia where nasty things were going on: judges' letters addressed to me but never sent, and showing up months later in their files; no replies from the crown, nor return phone calls in re proven perjury; a lawyer's letter threatening to sue and intended to scare the bejabbers out of me.

I weathered the embarrassment of being in the press, but I got justice, and I had nothing more to do with them. But now it seems somebody with clout did. It was a bully girl who was behind this, although I never saw her. She worked for a judge. On 22 December she was fired. In a fit of pique, the judge sealed his chambers. He said Vicki was the only one he trusted. What did that say for the other judges, crowns, clerks and security? For a month the court was hampered by his actions and then, on 17 January, he was ordered by Justice Zuber to open the door. With such paranoia and infighting by a judge who makes decisions on critical family issues with their extended social implications, it is small wonder that the Attorney General has pledged a legal system overhaul.

In his announcement of 6 December, the headline reads, "Ontario Cracks Down on Support Defaulters." The operative word here, of course, is "defaulters," yet employers may be permitted to remove funds from pay envelopes of all payers of support. This is unacceptable for several reasons: Businesses should not be drawn into such an invasion of privacy; paymasters are not sworn to secrecy; it will not make the defaulters behave, they will simply change jobs or disappear, and this is a futile attempt to legislate morality.

To make a request for exemption, dependent on the permission of the recipient, is patently unfair. The cranky partner who stubbornly refuses to enter into a face-to-face meeting with the supporter who has never failed in payment must be dealt with severely. This could be managed through the promised overhaul by withholding funds until they co-operate.

Now the bleeding hearts will raise a dust-up, claiming that it is the children who are being deprived. Not so. Brother Richard, chairman of the Hamilton-Wentworth food bank, with years of experience in discerning the bad actors, recently said that money is not the main issue. "You could give some people \$5 million and it wouldn't be enough," he said, because they have no skills in bringing up children, managing a household, or social mores. They must be told to make a start by putting the cap back on the toothpaste.

The first order of business in restructuring our legal system is to restore a respect for truth. Flagrant abuse in sworn testimony and affidavits has been the price paid for the abandoning of perjury charges. Lawyers will tell you most of what is passed off as truth is creative fiction. A tiresome similarity in a comparison of testimony points out that lawyers are programming their clients to be loose as a goose in setting legal scenarios. How is this different from 50 years ago when the man, in order to protect the little woman's honour, would agree to fake an adulterous liaison, complete with cameras? The only ones benefiting from this subterfuge are the lawyers.

As members of this committee, you have a great burden to carry. We are at a crossroads where people are demanding that the new government challenge the legal system and remove the abuses. The CTV program of 26 November asked the question: "Who's Policing the Lawyers?" The answer was, nobody. With respect, I ask you not to add to this confusion, but to present us with as perfect a Bill 17 as is humanly possible.

I have just appended here some of the things that I referred to in there, any references I made. I have added that on at the end.

**Mr Carr:** I just wanted to know what got you started down this road. Was it a particular incident?

1140

**Mrs Demeter:** I was reading some things in the paper and there were some personal, or related, or friends, or people who were having difficulty with some of these things. Many of the people who are involved in this are very busy making a living. They do not have time to be scooting around from one courthouse to another, to take

the time. There are quite a number of people of my generation who are now on to this.

**Mr Carr:** You might be probably even a better expert than some of the lawyers, having followed it clearly, because you come at it from maybe a more objective view. When we speak with some of the lawyers, we hear about the tremendous backlogs. We have got a year, one gentleman said two years. You ask the lawyers and they say, "Yes, maybe so, but we could settle before that," but then the reality is that they usually do not until it comes up to court day. So basically the court system, as the Attorney General will tell you, is in an absolute mess. And I was just wondering what your experience has been in these cases about the amount of time it takes to get a solution from the court and, also with that, how long and how much it costs.

**Mrs Demeter:** It is a zoo and I think the lawyers have got to be brought to task for taking on too many clients. There is a retainer when somebody goes in to them and then they forget about you and they are busy with the next, and they see you and they do not see you again until maybe you have to harass them or call them, and you usually get their secretary; you cannot get them. There are a whole lot of things have to be done with the law society, really. It must be.

**Mr Carr:** So you do not have any idea what it costs to go through the system with something like this?

**Mrs Demeter:** I know one man, it is over \$30,000 right now, yes.

**Mr Carr:** In lawyers' fees and so on?

**Mrs Demeter:** Yes, in lawyers' fees, yes. Oh, that has got nothing to do with the settlement. That is just lawyers' fees, yes.

**Mr Carr:** Also you mentioned, I think, on page 1 about the SCOE office, the bullet-proof glass and so on. Maybe you could expand a little bit on that, because I would like to hear a little bit of what that is about.

**Mrs Demeter:** Okay. In the London office, as Gail Taylor told us—we came down to see her; she was the executive director; now she has gone with the federal government—but the glass there, there is no egress after you are allowed in the door. You are just in the lobby and if you want to speak to anybody, you have to speak through just a hole, like that, and if it is a tall person, it is a most embarrassing position to be in, too, to have to get down, and it is totally unsatisfactory.

The reason that Miss Taylor gave for having this 800 phone number—and it can take you anywhere up to two hours to even make contact on that, and then it is just this electronic thing telling you answers to four questions and they are not what you want to know anyway. But she said they did that because, "Our staff is certainly not big enough, that if we answered all the questions that came to us"—well, you know, they could not afford it. Well then, why have it? It is just another body there that is creating havoc.

They have held up cheques. I know, personally, of money that has been sent to them and the recipient has not got it and then there is another, "Let's go back to court."



This has got to stop, because the people are talking now about the difference in the standard of living after separation, that there can be this wide divergence. Certainly people are keeping up two homes where they only used to keep up one. There is going to be a drop for both men and women. If the court says, "This is what is supposed to be paid," and it is paid faithfully, that person should never have his employer have anything to do with this. This has nothing to do with business, absolutely. They should not be put through that.

As for this business of asking people who are at loggerheads to get the other one to make some kind of an agreement that it can just be paid to them, this great big rise in how many people were defaulters came all of a sudden and it came after there was a general order issued that everybody had to pay through SCOE. Then you would hear the people on the talk shows say, "And these are the defaulters." They are not the defaulters at all.

Just because people decide to separate, for whatever reason, does not mean that either parent has any less love for that child. They are going to do the very best for them—and that applies to grandparents too—that they possibly can. And the least interference that we have—as I say, there is nonsense that you will read on this one.

I gave this to Edward Greenspan at the Shirley Show on the lawyers, and he advised me on it. I wrote

"I think it was Henry VI who said, 'But first—let's kill all the lawyers.'"

"Church bulletins are carrying ads under the heading 'Women's Interest Groups'—Women, Children and the Law. Guest speaker (unidentified) and a phone number.

"A friend of ours, curious as to why fathers were not included, attended one of these in a private home. The speaker, a female lawyer, warned them of the necessity to keep absolutely quiet if they were contemplating divorce. Don't tell anyone—parents, children, religious counsellor—until they had seen her.

"She would advise them how to clean out the bank accounts and take the children, because the judges placed such importance on 'possession' being nine points of the law."

Then I asked Mr Greenspan, "Has the law society sunk so low as to look on the hustling of business in homes, and this very bad advice, as legal or ethical?"

And this is what is happening, and there is proof of it all over the place and there is no need for this hate to be engendered by any outside body.

**The Vice-Chair:** Mr Carr, I would like to remind you that we have run out of time, if you would not mind keeping it brief for now.

**Mr Carr:** I am up, am I? I am up.

**The Vice-Chair:** I would like to thank you for coming and giving us that presentation.

**Mrs Demeter:** Okay, thank you.

FRANK MACKINNON

**The Vice-Chair:** Frank MacKinnon, please.

I would like to thank you for coming and remind you that you have 15 minutes. You can use that whichever way you want to use that. You may begin now.

**Mr MacKinnon:** Well, I would like to thank you all for inviting me here today as well. I would like to start off with a bit of a preamble, and sitting here this morning listening to the presentations, given that I am one of the candidates you and your committees could be chasing for support payments, whether I deserve it or not, I felt like I was drawn and quartered by the various associations that spoke here this morning.

I want to thank Anne Demeter. It is the first time in the 10 years that I have been separated and divorced that I have ever heard someone speak out on behalf of the supporting spouse, male or female.

My problem in preparing for this morning's presentation was how to present the case in the first place, and I decided I would personalize it, because in the end it brings things home to reality, if you like. It is one thing for associations to speak in a black-and-white sense as they look out at this as a job to be done. It is another thing when you are caught in the middle of it, and as Anne Demeter clearly points out, you have no-one, not even the law, to turn back to for guidance or support.

With that in mind, I would like to go through my presentation, and I would like to point out once again that it has been personalized but I believe on a global sense it applies to most people in my situation.

A bit of background: Where my situation is concerned, it shows that for 10 years I have been separated and providing financial support to my wife and children of that marriage. During those 10 years, I have tried extremely hard to maintain family relations, and I believe I have succeeded in doing so—10 years of fostering parental relations with my children, even under conditions that were adverse to what I was trying to accomplish and maintain in a situation where I was living apart from my children, but at the same time trying to create the feeling of security that the child so dearly needs in a situation such as divorce and separation.

It is very expensive to go through a divorce, as many people have found out and I am sure you are aware, but my personal cost was \$30,000 in legal fees before I finally established terms with my spouse, terms that were acceptable, more to her than they were to me. If I had continued for my purposes, the \$30,000 would have gone on to a much larger number.

1150

I have had 10 years of alimony and support payments, without ever missing a single payment, I would like to add, and 10 years of providing the kids extra, whenever finances permit, and of sharing tuition fees with my oldest son and my daughters, soon to enter university and remain there.

The current status, then, is that I have been officially divorced for the last three years. I did not require, however, a court order to bring home the responsibility of support payment for the previous seven. I have been married for the last two years and a half, and from that marriage I have two young children. I have a total of five children from both marriages, and I am very proud to say that I feel a responsibility to my family, whether they live with me or they live apart from me.

I have, according to our separation contract but not through legal enforcement, reached a mutual agreement with my ex-spouse to reduce the alimony portion of support and custody payments. This agreement has been made between my ex-wife and myself and without the involvement of lawyers on either side, and I think the point will be drawn later. Payments are made direct and copies of all cheques are available as proof of payments for any year you might like to audit.

According to our separation agreement, my responsibilities to provide my ex-wife with financial support in addition to custody support ended a year ago. That is, she was supposed to be self-sufficient two years following the divorce, and I have no formal record that she is or she is not. However, given the limited information I have, I did meet with her at my request over a year ago and negotiated a reduced payment to her which is less than the contract actually allowed me to do.

I recognize certain circumstances in today's economy, especially when you have three children living with you, that sudden cutoff of finances has an impact. I am well aware of financial strain for the reasons or comments I have made, so it is not my position, having left my first wife, to cause anybody undue stress. It is, in fact, my position to make life a little bit better for both of us. I have no formal idea of whether my ex-wife is working or not. She on the other hand does, and prefers not to make that information available to me, so I continue to work in a vacuum and I continue to make decisions as fairly as possible based on limited information.

The separation agreement was established, based on the fact that my current wife was employed at the time, and since that time we have had two children and my wife has been out of the workforce for the last three years. The point of this is that the decision was made when my current wife was making a substantial amount of money. I should not say substantial, she was making a good income just before the decision was made or the court order was produced. She had left the workforce in favour of having a child and I continued to pay, according to the court order. I continued to ensure that both families were looked after as fairly as possible.

The next page is my impression of the impact of the proposed amendment to Bill 17, and I am not against the bill, I am in favour and I am hoping that I am drawing a point that I am in favour of custody and support. I just totally disagree with people who divorce and leave their children forgotten. But I am against the bill when I hear groups such as I have heard this morning talk about the male role here. I mean, that is the problem I have had with the law from the very beginning. It is always the male who is the culprit. Now I suppose we make up the majority. However, one of the groups, and I think it was SCOE, bothered me when they indicated that statistics are not kept regarding support payments. My attitude towards that is if you do not have a statistic, then you do not have a problem. If you cannot prove the situation, why are you people here meeting to solve a problem in the first place.

Needless to say, if payment is to be made direct through my place of employment, I am afraid my ex-wife

will use this to reverse the progress made to date. I have had a long struggle in getting where I have today. I believe that a regression will take place and we are both going to pay for that, and we will pay for it dearly.

My income versus financial commitment to my family is already heavily burdened. I could not sustain a reversal in current conditions as per the first point or the burden of additional legal fees. The children from the first marriage are 20, 18 and 16 years of age. Their needs are different than the younger children who are four and seven months. I am committed, as I have been in the past and continue to this day, to ensure the best care possible for my family. I do not believe that I stand alone here, but I am here to speak on behalf of fathers like myself who feel that responsibility. Children from the first marriage choose to live with me for months at a time. Then they move back with their mother. I believe that wherever the kids are is where the child support should go. And we try to balance that or I try to balance that.

Legal intervention should not be required to redirect the child support under those circumstances. It would cost too much money; it would be too time-consuming and repetitive changes would be quite a burden to my employer if my employer is going to be pulling funds as a direct payment.

To be placed in a position to involve the legal system for every desired change in circumstances would cost thousands of dollars to both sides. The only beneficiary in this case, as it has been in every case, will be the lawyer. My recommendation, based on my own personal experience, is that the government should implement amendments for troubled situations only. That is where the spouse has reported delinquency, the spouse male or female, related to the support and custody payments. The province of Ontario should assume the authority to investigate thoroughly and intervene to ensure fair payments are maintained. In all other cases I truly believe you should leave things as they are.

**The Chair:** Thank you very much. Mr Carr?

**Mr Carr:** Yes, I want to thank you, as we have thanked all groups coming in, particularly, as I said before, the ones that are dealing with a personal situation rather than the groups that are doing it without personal involvement. And we sincerely appreciate that from all sides. One of the questions I have got, and I asked it earlier to one of the front-line workers in the Ontario Public Service Employees Union, the person that is right there, what the reasons are for non-payment? She cannot give me the reason why they do not pay or will not or whatever. I was just wondering, the perception has been left that 75% of the men, mostly men, do not want to pay, and obviously that is not the case in your situation. I was wondering if you have any guesstimates, through the people you have talked to, of whether this is high or what the reasons for non-payment would be?

**Mr MacKinnon:** If I look at your question as being two, the first one being, "Do I mind paying?" the most honest response to that is, "Yes, I would rather keep that sum of money." I feel a tremendous commitment towards



my children as every parent does, I am sure. It is because of my parental nature that I must make that payment. I am not encouraged by my spouse to make the payment in terms of the support or understanding that she may pass on to myself in this particular case. I am locked out of most situations that my children may be involved in or be part of.

That sort of begins to answer the second part of your question and it ties so well into Anne Demeter's commentary because basically it is a burden to make custody and support payments. But it can be lightened by a positive attitude and support by the receiver. If you do not get that support then you must remind yourself on a continual basis that you are doing this for the children and not for her or him as the case may be. That is a very difficult thing to do.

If it is 75% I would challenge the number anyway, because most, in fact all, of the people that I know in my situation, like myself, do not miss payments. Now I am not going to stand here and try and cast a halo over my head by saying that at the first of the month, every month, I am there at the door with my ex-wife's cheque, but I am there within the first few days. To go back to Anne Demeter's point about the receiver being perhaps the culprit in this situation, you would think that after 10 years the receiving spouse would have the common sense of respect, I guess, for her, or the payee in this case, of talking and sharing concern regarding the children, etc, but nothing has changed. Things are like they were perhaps 10 years ago. I would suggest that that attitude exists in many, many of the cases and that could be the major reason why people fall back on support.

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**Mr Carr:** One question, too, regarding what I think one of the—and I do not want to quote him wrongly, but one of the lawyers' groups that were in yesterday said, "Well, if the payment is too much, just go back to court and change it," and then, of course, we find out that it takes a year to two years to do that and I was astounded to see the \$30,000. Maybe you could just give us your experience of what it was like to go back through the court system and then also, I guess—I take it that is why you tried to work out the agreement individually with your wife, without the lawyers, because of the cost and time frame. But maybe you could share with us where that \$30,000 went and what it would be like if you tried to—

**Mr MacKinnon:** Well, the \$30,000—and I remind you, that was my cost. I have no idea what my ex-wife's cost was, except she handled that, I guess, through the settlement payment from myself. But the cost was directly related to the fact that it took a long time to achieve the end result. It took a long time to convince my ex-wife that her husband was not coming back, it took a long time for the lawyers to get the message across. It is hard to say, you know. In a situation like this there are so many factors at play, you never know what the real circumstances are and I, of course, do not want to cast the impression that I did everything perfect and my ex-wife did everything wrong. That is not the point. Divorce is a very, very dirty situation.

I know people whose expenses have been much higher than that. I know people who are going through divorce right now and in the last few months have come together with a document; they walked into a lawyer's office and said: "Here, notarize it. This is what we want." But where you have a situation between—and I think it is the case in most cases—where one of the parties refuses to come to terms the cost will get higher and higher. There is no accommodation through the legal system that basically says on every point—I mean, you could take divorce and you could break it down into the various points, as I have basically with this document, and you could say, "All right, now we've spent enough time, if not money, on that point, it's time to move on." Someone should intervene and make the decision where the individual is incapable or demonstrates that he or she is incapable of making that decision.

**Mr Carr:** I only wish we could have used some of that \$30,000 for the children instead of for the lawyers.

**Mr MacKinnon:** Absolutely.

**Mr Wessinger:** Mr MacKinnon, are you aware that prior orders and separation agreements are not subject automatically to support deduction? So unless your ex-wife requests it, you will not be subject to support deduction.

**Mr MacKinnon:** I am not sure if I understand your message.

**Mr Wessinger:** I am just saying that you will not be subject to a support deduction order unless your ex-wife files and requests the order as amended by the separation agreement with SCOE. So you are not going to be subject to it, unless she makes that decision.

**Mr MacKinnon:** That was the reason for coming here, because I was not sure if I would be and I thought, "My God, there must be more people like me," and if this is going to be an en masse—or a decision that affects the mass, in essence what I was hearing this morning, then it would be very damaging.

**Mr Wessinger:** So you will not be subject to it unless your ex-wife makes a decision to require SCOE to implement the program. That is the first thing I would like to tell you.

The second thing I would like to tell you, and I think all members of the public should be aware, is that separation agreements themselves, even in the future, will not be subject to support deduction unless the spouse requests the branch to enforce it. So in future, people can opt out of the situation by agreement, provided there is no court order made, of course.

**Mr MacKinnon:** I guess, and I know I am out of time, my only point to that is if I were the receiving spouse and I looked at this article that you have had in the late December time frame—

**The Chair:** I am sorry, we entered into a side discussion. My apologies.

**Mr MacKinnon:** That is fine.

To continue, I would look at that as an opportunity to go to the Ministry of the Attorney General and reverse things to where they were which, in her case, would be

beneficial. As I indicated, it would force myself or people like me to incur legal expenses that would very quickly—I mean, you are looking at \$250 an hour now for legal expenses, and all of a sudden you are looking at another \$10,000 to \$30,000 of fees for help, lawyer help, to defeat something that the ministry forced on us. Your article in the Toronto Star back in late December is enough of an opportunity for people to basically jump on the bandwagon and say, “I’m going to get the SOB again,” and it really scares the heck out of me and a lot of people I have spoken to.

**The Chair:** Thank you. Ms Murdock has a short question.

**Ms S. Murdock:** A comment and a short question. Just to even go further than what Mr Wessenger has said, one of the sections under Bill 17 is 3k, and even if your ex-wife went and asked for the order to be enforced through this bill, it is only if the director thinks it is advisable, and if it is impractical, it is likely that the director will not consider it advisable. So if it is working for you, unless it is going to serve a purpose it will never be included in the process. In truth, if it is working for you, and from what you have said and if everything here is correct—

**Mr MacKinnon:** That is right.

**Ms S. Murdock:** —then, I do not think you have a problem. But I am just interested that wherever the kids are is where child support should go.

**Mr MacKinnon:** Yes.

**Ms S. Murdock:** And I agree. Obviously, if the children are there, you need the money to feed and clothe them where they are, but how would that work, how could you get that into the system? Presuming that this goes through, the system is not set up to have it—you know, like the kids stay with you for three months and then they decide that they are going to go back to the mother for three months and then—you know? I mean, the system is not set up to do that and I am wondering—

**Mr MacKinnon:** You are absolutely right and I think that is where the—and I have no answer for you, except in my personal case. When the children move back with me, whether it is one, two or the three of them, I adjust the custody payment accordingly. At first my ex-spouse did not appreciate that. I sat down and I tried to explain it and I believe today she still does not appreciate it, but at the same time, as I said to her, “Well, look, you have got then to sit down and talk to me about things that are going on so that I can encourage the child in your direction and these things won’t happen. But if you don’t do that, then the consequences—they’re living with me and that’s an expense,” and I cannot double that expense by paying her as well.

**Ms S. Murdock:** It is just a question that no doubt the ministry people will let me know how that works later on, but it was a point. In fact, out of everything that you have said, that was the thing that probably struck me the most because, surprisingly, it has not been raised all week. No one has raised that issue at all. Thank you very much.

**Mr MacKinnon:** Okay.

**Mr Elston:** Just briefly, it is basically to the parliamentary assistant and his advisers, because the advice given to our presenter has basically been, “Don’t worry about this, this won’t”—

**Mr Wessenger:** I think there should be some clarification.

**Mr Elston:** I was just going to ask for that and since you are volunteering, proceed.

**Mr Wessenger:** There are two ways for your existing order to be enforced. First of all, the recipient, that is your ex-wife, would request it, plus it is feasible. So those two tests—the recipient requests it and the director considers it feasible.

**Mr Elston:** So, ie, there is an identifiable income source?

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**Mr Wessenger:** It is an identifiable income source, that is right, correct. The second way it could be enforced is if the agreement is filed and the director considers support deduction to be the most practical method of enforcement, but that would probably only arise in the case of default, I would think.

**Mr MacKinnon:** With all due respect, I sat and listened to the two groups this morning. I caught the tail-end of one and the other one from the Sarnia area, and what makes me nervous about these groups is that they present a very black-and-white picture. There is no room for feasibility, if you like. There is no room for what may really be going on here and it becomes a case load situation where, if we spend time listening to this or trying to do something mutually beneficial to both sides, it is going to increase the case load. Let’s just stamp it as being completed and let the consequences fall accordingly. That cannot be done. I think you would cause more harm there in that approach than in trying to find something more equitable for both sides.

**Mr Elston:** You will likely also be pleased to know that if your payment arrangement is to be enforced under SCOE your contributions to your son’s tuition will not be considered as any part of the support at all. In fact, any informal arrangements for you to increase will not be acknowledged by SCOE as being payments to be made and, in effect, you could not make extra payments to SCOE, because they would not forward them on. They only pay what is due to your ex-spouse. But in fact they would require you, if you wanted them to be made, to pay them directly to your spouse or directly to your son, who is making the payments.

Basically, I think what the point becomes is that there is very little flexibility in your circumstances. I have to acknowledge that while you say that maybe 75% is not the right number, that is probably true, but there are a lot of people who do not pay support and you are evidence that in fact there are people who make the payments out of a sense of responsibility and obligation, which is right. What we are trying to do here is find a quick way of making sure that the majority of people in fact make the payments that they are responsible for.



The question for us is now, how do we make it flexible enough? Your circumstances make it appear that it is going to be dangerous or could be dangerous if there is not enough flexibility for people like you who are responsible and law-abiding. So I think it is a word to the wise.

**Ms S. Murdock:** A point of clarification here: If that is the case, then what does section 3k say? If what Mr Elston was saying, and got clarified by you, then I am reading section 3k completely wrong.

**Mr Wessinger:** That there is a proposed amendment to the bill.

**Ms S. Murdock:** Which changes that?

**Mr Wessinger:** Which changes that. That is right, that is what I am referring to.

**Ms S. Murdock:** Changes it how?

**Mr Wessinger:** It changes from the word "practical" to the word "feasible."

**Ms S. Murdock:** I do not have "practical." Section 3k:

"(1) This section applies only to support orders filed with the director's office that are,

"(a) support orders made by an Ontario court before this section comes into force;

"(b) domestic contracts and paternity agreements...

"(2) The director may enforce payments under a support order to which this section applies as if a support deduction order had been made if the director considers it advisable to do so and the director shall do so if the recipient requests enforcement...and the director considers it practical to do so."

**Mr Wessinger:** Yes.

**Ms S. Murdock:** You have changed "practical" to "feasible"?

**Mr Wessinger:** Yes.

**Mrs Cunningham:** Big change, eh?

**Ms S. Murdock:** You're not kidding.

**The Chair:** Could we reserve this discussion for clause-by-clause and amendments, please?

**Ms S. Murdock:** Yes, well, I wanted a clarification, which I am allowed to, Mr Chair.

**The Chair:** Yes, certainly.

#### SUPPORT AND CUSTODY ORDERS FOR PRIORITY ENFORCEMENT

**The Chair:** We have now a presentation from the Support and Custody Orders for Priority Enforcement. Could you please identify yourselves into the mike? My apologies as well, on behalf of the committee, for the time delay. You have, as you have probably heard, having sat through a couple of presentations, a half-hour as a group and you can divide that time whichever way you wish.

**Ms Poulin:** Okay, thank you.

**The Chair:** Please start when you are comfortable.

**Ms Poulin:** My name is Judy Poulin. This is Rosemary Gilbert and John Nicks. We represent Support and Custody Orders for Priority Enforcement, or SCOPE for short. SCOPE is an organization committed to improving the enforcement of child support and changing the attitudes of

society about parents' responsibilities after separation. The majority of our members are registered with SCOPE.

We will not be quoting statistics. I am sure you have heard them already. We will be trying to give you a first-hand view of the problems and emotions that we and our members have encountered. We will also be addressing some of the suggestions that we have come up with.

Our group was formed in February 1990 after an article in the Ottawa Citizen. My phone has been ringing off the hook ever since. We now have a mailing list of over 250. Our first newsletter was sent out in the fall of 1990 and it is attached to your brief. Our second will go out in March of this year.

We are currently based in Ottawa, but will actively pursue membership across the province in the coming months. At our monthly meetings we spend time talking about our individual cases and how to improve them. We are currently in negotiations with SCOPE to set up advisory boards across the province. These boards would provide the vital link that is missing between SCOPE and its clients.

**Mr Nicks:** As an organization, SCOPE is pleased to see the new political will apparent in Bill 17. Changes to both the Support and Custody Orders Enforcement Act and the operation of SCOPE are long overdue. This new desire to make a workable and effective system out of that which currently exists is one that we are relieved to see.

We feel that the proposals contained in Bill 17 will be a great benefit in clearing up the massive backlog of cases that now exists. This bill will benefit not only the children of Ontario but also relationships between members of the family unit as a whole.

The penalties proposed in Bill 17 for failing to fulfil the moral and legal obligations parents have towards both their children and each other are a step forward in resolving the current situation. However, we are concerned that, as in the past, these will not be followed through and the program will lose more credibility.

Many fine words and promises accompanied the original Support and Custody Orders Enforcement Act. Many of these remain unfulfilled. We are concerned that few changes have been proposed for improving debt collection from those defaulters who are self-employed or whose incomes are from non-salaried sources. We are aware, however, that this is a major problem area and we will put forward proposals for deterrent measures to help deal with this.

The system of debt collection will continue to operate poorly unless adequate funds and resources are allocated to deal with it. Care must be taken to ensure effective systems are put in place to handle the massive and growing case load. SCOPE's staff must be fully trained to handle all procedures to avoid client frustration, a major issue in the fundamental reason for the existence of this organization.

**Ms Gilbert:** Support deduction order: One issue that we are glad to see addressed is the provision for support deductions from salaries and other income sources. This was one of our original suggestions to SCOPE for improving support enforcement. We feel that this will create fewer problems within the separated family, since the almighty-

dollar focus will be removed. Many custody and access battles are fought because the payment of support is a bone of contention.

On the enforcement side, it simplifies matters in cases where there are reluctant debtors. It will no longer be a simple matter to avoid enforcement by garnishment by changing employment. It is by no means rare to find a debtor who regularly bounces between paid employment, unemployment insurance benefits, self-employment, back to salaried employment, often with a spell on social assistance thrown in. All this is done to stay one step ahead of a garnishment. Meanwhile, the children and families entitled to the support being avoided are probably living below the poverty line. We do not need to remind the committee of the poverty rate for single-support single mothers. Compliance on the part of employers is also provided for. This is important in reinforcing the concept that society as a whole must be responsible for the enforcement of court-ordered family support. The image of a wage attachment or salary deduction is very different from that of a garnishment. It is an important step in establishing in the public mind the concept of the universality and normality of this form of payment. A support deduction order will be issued whether the payer is a deputy minister or a parking lot attendant. It does not send out signals that the support payer is a deadbeat who must be forced to meet the financial obligations.

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Flexibility is also provided by permitting the parties to opt out of the program if they agree and if security requirements are met. This could apply where there has been an amicable separation or in the case of a debtor who has been faithfully making all payments on time and in full. This opting-out factor will allow enforcement officers more time to deal with those cases that require active rather than passive enforcement.

Provisions for enforcement: We are in large part in favour of most of the amendments being proposed for the act. However, the original act also contains strong provisions for enforcement. The problems with the current act from the recipients' perspective have as much to do with the lack of staff at SCOE to initiate enforcement action and failure to follow through in a timely and forceful manner as with any weaknesses or ambiguity in the act as it now exists. We are feeling a healthy scepticism and will reserve judgement on the changes which will be implemented until we see concrete changes in the cases of our members.

Where there has been contempt of court by perjury, such as outright lying about income sources or assets owned, whose responsibility will it be to lay charges? Since the crown attorney lays these charges and the crown attorney is not present at a default hearing, how are these charges to be laid?

Concerning the new obligation on the debtor to provide information on changes of address or employment, how will these be monitored? Since searches through federal data banks average 40 to 60 business days, a debtor trying to avoid payment could be untraceable for months before the next enforcement step could be initiated. There then is a time delay before this next step can be effective in getting

the money flowing to those entitled to it. In the meantime, the arrears have accumulated. In the meantime, the children continue to live in poverty.

More use must be made of the default hearing provisions. Bill 17 proposes that even if payment of outstanding arrears has been made SCOE may elect to proceed with the default hearing. We applaud this measure. We believe that if a case has reached the default hearing stage, and this is usually when all else has failed, the defaulter should in every case be made accountable to the court. The court could at this time decree whether a penalty should be imposed or a security should be provided or both. This would put some teeth into the system and give it credibility.

Case history 1: "For the last eight years I have had to fight to receive the child support ordered to me by the court. There have been six default hearings ordered. Three of them were cancelled because payment was made before the court date. In two of them the payment was made in the waiting room outside the court and the judge then dismissed the case. One hearing went ahead with my ex-husband failing to appear. He eventually paid 10 months' worth of payments, again without having to answer to the court. Six times taxpayers' money was used. Six times my ex-husband walked away without a penalty. He continues to pay his support only when backed into a corner by SCOE and the court system."

The bill has made some improvements in the procedure for a writ of seizure and sale. The provision to change the amount owing directly with the sheriff without having to go back to court is a good one. We would like to see the court system automatically recover from the debtor all costs incurred in this process. If the case has come to the point of seizure and sale, measures need to be taken to deter a repetition of the default. The cases of our members are full of writs of seizure and sale and arrest warrants from default hearings, none of which have been actioned or executed. These are the strongest measures we have in the current or the proposed legislation. The act will continue to be a paper tiger unless its provisions are used consistently and fully and unless the court systems and the police forces of this province give it their full co-operation.

**Ms Poulin:** Many of the phone calls I have received over the last year have been from frustrated men and women. A lot of this frustration is due to the lack of information being given to them. Some receive conflicting information; some none at all.

I will read you one case. It was filed in October 1987. The court ordered the debtor to pay all arrears in June 1990. A warrant was issued for his arrest when they were not paid. As of this date, they are still not paid and the warrant has not been executed, despite the fact that they do have his present address. The custodial parent in this case spent many hours trying to get something done, but eventually gave up.

You get to the point where you are so overwhelmed by the whole thing that it seems to be better just to give up. We are afraid of the message that this is sending to our children. The frustration takes over and it works its way into your everyday life.



There have been some improvements in the phone system, but it is still inadequate. SCOE staff continue to give incorrect information. It is imperative that this change. The feelings you go through when support is not being paid are hard enough to deal with without being made to feel belittled and unimportant.

We would suggest an information form be sent to clients approximately every six months. It would include a list of dated actions that have occurred since the last update. It would also ask for any new information that would assist SCOE. Also, we strongly recommend an advertising campaign to include radio, news media and television—educating the public of the consequences that families go through when they cannot depend on monthly support payments.

Our recommendations for the act are as follows:

The act would include provisions for strengthening communications with the federal government in order to improve the retrieval of vital information on the debtor.

That the necessary steps be taken to ensure all penalties stated in this act be fully enforced by the courts.

Our recommendation for changes in the act that go directly towards deterrent measures are as follows:

All default hearings once ordered by the court must be heard regardless of amount owing. We would take away the discretion of SCOE to proceed with such.

All costs incurred would be recovered by the court in every case where a writ of seizure and sale have been so ordered.

We strongly recommend that public input be sought in the implementation of the regulations mentioned in the act. Thank you.

**The Vice-Chair:** Thank you very much for that interesting brief.

**Mrs Cunningham:** Thank you very much for coming before the committee and helping us out with this legislation, and let me commend your group for the education that you provided for the communities that you come from. I was reading—I guess it is the Ottawa Citizen that covers you most and you obviously have done a very good job of raising some concerns around a very important issue. Because of that I think you have got a lot of credibility so I am going to ask you a couple of questions with regard to your brief this morning.

You seem to be very understanding in your approach. Although you have your own group, you have actually offered to start a men's self-help group or perhaps yours is for both anyway, but I saw you reached out and said some of the men who are talking about losing their jobs because of garnishment that took place eight months after they had their problem because of the operation of SCOE—I wondered if you would talk a little bit about that.

**Ms Poulin:** We have a problem, which was mentioned before, regarding lawyers in family court. On both sides, it hinders the outcome of the case. A lot of men get bogged down in lawyer fees that they just cannot possibly pay and, on the other side, where there should have been an increase because circumstances change, the same thing happens. The custodial parent cannot afford a lawyer and

therefore things stay the same. So, in that sense, we feel that there are injustices on both sides—along with the access issue, too. I have received a lot of calls about the access issue and, yes, there are people who abuse the system. Our main concern right now is getting this flow of money on a better track, but we are listening and talking to other groups and trying to be aware of those problems and, yes, we do admit that they are there.

**Mrs Cunningham:** I am interested because you have given us so many other suggestions with regard to perhaps how we can improve the legislation, but also some ideas for regulation change, and you have also made some very specific comments about the court system. We are also chatting, I think, as a committee, about making recommendations beyond this, I hope, so that we can advise the government as to where the priorities are of the persons who come here, specifically the whole idea of access, which we have tried to separate out from this. So we are aware of it.

You will not relate, I do not think, to this very much, given the work that you do, but we have had people come before this committee who have told us two things: first of all, that if you automatically deduct from their wages in spite of an excellent track record, they are very concerned about their jobs. They feel that there should be an opportunity in this legislation, at least for people who have a good track record, or for new people who are becoming part of this system, unfortunately, for them to establish a track record and there should not be an automatic deduction from one's paycheck.

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The other point of view that has been raised has been from businesses themselves, payroll people who have said it would be a very awkward thing to do. Then, of course, the third point of view is that this is often another burden for business, the business community who are already overtaxed and not as competitive in Ontario as they have been in the past. So we are taking that into consideration.

My personal view is no secret. I have worked in this field for a long time, so I am supporting the bill, certainly in principle right now. But I feel there should be a period of time where people who have established a good track record or people who in fact have been positive and there is a positive family relationship should not have an automatic deduction where they have been paying, let's say, for years.

**Ms Poulin:** We agree with the opting-out provision that is provided in the act. If the track record is there and if the ability to return to the system, if once you have opted out—as long as it does not get too far into arrears. That is our worry, too, you know, if you keep going out and in and out and in, and you stay out for too long, you are going to get too far behind. That is a concern that we have. But as far as the inconvenience is concerned, I think for far too many years the other side, the custodial parent, has been very, very inconvenienced and it is time that that changed.

**Mrs Cunningham:** Do not get me wrong. You do not ever have to convince me on that.

**Ms Poulin:** I know.

**Mrs Cunningham:** But when you say the opting out, there really is no opting out here, unless—I mean, there is a slight opting out. But the point of the matter is that everybody who has a separation agreement, whether they have done it unofficially or whether they have got an informal arrangement—any piece of paper; most people have a piece of paper, because everyone has a slight fear down the road, the “What is going to happen to me?” kind of thing, as circumstances change. This means everybody will be subjected to this particular piece of legislation. So I do not think the opting out is going to be there in many instances.

**Ms Poulin:** For the new cases; my understanding is that for the old cases it is up to—it has to be requested.

**Mrs Cunningham:** Yes.

**Ms Poulin:** What I understood from SCOE is that they are going to look into each case that is being requested, and if there is a history of payment being made there, they are not going to automatically say, “Okay, just because you want it, you are going to get it.” That is what I have been informed by them.

**Mrs Cunningham:** Okay, could we have a clarification here on that point, because this is not—I mean, I happen to have—I know you indirectly because of your reputation and talked to people in that office. That is exactly what they advised me of about a week ago. I came to the committee, until I had done my homework, with that same view. So perhaps we could have the clarification here. This is what is coming in southwestern Ontario. The clients have been advised that way.

**The Vice-Chair:** Could I ask the parliamentary assistant to the Attorney General to answer that question?

**Mr Wessinger:** The original form of the bill as drafted did represent that viewpoint with respect to the question of enforcement where practical, but the amendment that has been brought in changed the concept from practical to feasible, which has changed the legislation. So—

**Ms Poulin:** Could you define “feasible”?

**Mr Wessinger:** “Feasible” is where the director considers that it is possible to collect the—

**Mr Elston:** Probable?

**Mr Wessinger:** Yes, “probable,” shall we say? That it is reasonably probable—

**Ms Poulin:** Possible and probable or probable and possible or—

**Mr Wessinger:** —where it will work well. Where they feel it will work well, we will put it that way.

**Ms Poulin:** Where it will work well. So no regard will be given to his past.

**Mr Wessinger:** Where it is possible, reasonably possible, that sort of—if you cannot have an income source, you cannot do it, obviously.

**Ms Poulin:** No.

**Mr Wessinger:** It was basically—the idea was that it should not—if an income recipient requested it, they should have that right to have it come out of the system. That was the reasoning behind it.

**Ms Poulin:** Regardless of past performance? Then I have misunderstood.

**Mrs Cunningham:** Well, I did too. So, it is support orders made by an Ontario court before this section comes into force; so it is everything. I am thinking that you would probably have some sympathy for my position on this one, then, if we can work it out in the committee. By the way, it is not just my position; it is others’ as well.

**Ms Poulin:** I agree. I mean, obviously in terms of case load at this point in time, unless the new government is willing to sink a lot of money into this program, something has to be done to alleviate some of those cases. They even have cases on file where the support recipient had not filled out a filing package per se, and so therefore they are still sitting there. You know, there have got to be some options open to keep harmony, because it is not just a question of the money. It is also a question of the obligation of that ex-spouse to the children, and to know that they willingly and voluntarily—like this gentleman who was here before. He can pat himself on the back and be very proud of the fact that his kids can look back on it and say, “My father did this, and he was not forced to do it.” But yet we have to have that body there that will be able to do that, be able to step in and take over.

**Mrs Cunningham:** Some of those individuals who have come before the committee have even pointed out the real difficulties and the expense, as that gentleman did, of being able to pay more, and how much it costs him to get a lawyer so he can pay more. The informal arrangements have been brought to the attention of all of us by way of letter and mail. Could I ask you one more question? Mr Chairman, I know I am taking a bit of time here, but it is on the practical—

**The Vice-Chair:** As long as you are brief, Mrs Cunningham.

**Mrs Cunningham:** Okay. On the practical aspect, you just raised a point when we have had it before the committee, where the package that has to be filled in is on a desk. I have seen those packages in four offices. Nobody ever touches them unless you have made your 15 phone calls. It is a very time-consuming thing for the staff of SCOE to have to deal with those packages, and probably they should be looked at as to how informative they really are, whether they are even practical. But you are right. If, in fact, we start dealing with people who have a track record, a good track record, those of them that we can find, that is more work, and really this bill is aimed at people who do not have a good track record, I would expect. So, you have raised a point, and I thank you for it.

**Mr Wessinger:** I would just like to clarify again this whole concept of feasibility. The whole intent behind the legislation was to allow the recipient to make the choice to have the order registered and collected. Some of the reasoning behind that, of course, is the concept that being in compliance with an order does not necessarily mean that there has not been abusive behaviour with respect to the payment because some payer spouses abuse their position with respect to paying. So, we wanted to protect the recipient



spouse against that situation by giving them the right to register the order and have the deduction come in.

I certainly appreciate your brief, and with respect to page 4, I agree that in the past default hearings have been withdrawn when there has been this last-minute payment, and the result of that is there can be no order made. Then, of course, the payer goes into default again and it has to be all started over. We have recognized that that is a problem, so we are going to amend the act to take out the provision that when there are no arrears a judge cannot make an order. That is going to be taken out. The effect of that will mean that the court then can adjourn the matter and it can be brought back in the event of further default and orders made. That will stop that continual problem of a person coming, paying the arrears, the matter is dismissed, then the default occurs next time, it starts all over again. By changing the legislation the judge now can make an order, in fact; even under that section; for instance, give direction to the payer, order the posting of security, all the other aspects. He can still make those orders or, alternatively, he could adjourn it. So that will keep the jurisdiction and keep the pressure on the payer.

**Ms Poulin:** Okay. I think the new act is worded such that it gives SCOE the discretion. They will decide whether to go ahead with this default hearing or not. And what we are saying is we do not think that SCOE should have that discretion. We think that it should be automatic because it goes to deterrent measures. Even if it is your first time and it has gotten as far as a default hearing being ordered, you should be made accountable. Even if it is a matter of standing in front of the court and submitting medical records that you were ill, or whatever that may be, it goes to the seriousness of the matter. Right away, off the bat, people are going to know that they cannot get away with it, not even once.

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**Mr Elston:** Mr Chair, just on the clarification, because this is getting a little confusing for us: When the previous presenter was here, he was given advice that there was some discretion on the director, that the application might very well be made by the recipient to implement the collection by SCOE. On your clarification, it really sounded to this group as though all the recipient had to do was decide to make the application and her application would in fact be complied with by the director.

Can you tell us which bit of advice is right? Does the person who paid all the time need to fear that an automatic award will be made in favour of his former wife, or is what you are saying now the correct view, which is that all the recipient has to do is decide what she wants done, or he wants done in this case, and SCOE will comply?

**Mr Wessinger:** I think perhaps for clarification I will let staff answer this question.

**Ms Pilcow:** There are two situations in which support deduction can apply to an existing case or to a domestic contract that is filed with the program. One is where the recipient requests support deduction. In that case, the director will apply support deduction if it is feasible, and "feasible" generally will mean that if there is an income

source, support deduction will apply. That is one circumstance. There is another circumstance—

**Mr Elston:** Okay. So even if the person has never defaulted before, the recipient can make the application and the director really shall enforce the order.

**Ms Pilcow:** If it is possible.

**Mr Elston:** If it is feasible.

**Ms Pilcow:** Feasible. And feasible and possible, I think, have the same meaning.

**Mr Elston:** Okay. But if you cannot locate, and somebody wants to have the order enforced, they do not have to—

**Ms Pilcow:** You cannot do anything—well, you cannot.

**Mr Elston:** Well, if they do not—okay. Then they will not search?

**Ms Pilcow:** You cannot and you will not have to.

**Mr Elston:** They will not search after the source, for instance?

**Ms Pilcow:** No, they will search after the source, and if there is none found—

**Mr Elston:** Okay, so that is sort of like an automatic—the application is made and the director shall—

**Ms Pilcow:** Shall do it if it is possible.

**Mr Elston:** Okay, sure. Okay. That is the one.

**Ms Pilcow:** And then the payer does have the opportunity to apply for a suspension on the same grounds which apply to the payer in the first instance.

**Mr Elston:** Unconscionable.

**Ms Pilcow:** Unconscionable and consent plus security.

**Mr Elston:** Well, there is no consent, because the recipient has decided she wants it done. So there will not be any consent.

**Ms Pilcow:** Well, they may get together and agree.

**Mr Elston:** The only question will be unconscionability, which we have heard is virtually a non-existing ground.

**Ms Pilcow:** A very high standard. Now, that is one circumstance, Mr Elston.

**Mr Elston:** So that sounds like automatic registration and enforcement, unless the payer is a scoundrel and unavailable.

**Ms Pilcow:** Well, no, unless there is no income source that is found.

**Mr Elston:** Okay, I am sorry.

**Ms Pilcow:** Now, that is one circumstance that—where the recipient requests. There is another way that support deduction can apply to an existing case or to a domestic contract, and that is where the domestic contract is filed with the program or the support order is filed with the program and the director—

**Mr Elston:** By one party or the other, presumably? It does not have to be—

**Ms Pilcow:** It is only the person who is entitled who can file the—

**Mr Elston:** Okay, so only the recipient.

**Ms Pilcow:** That is correct.

**Mr Elston:** Okay.

**Ms Pilcow:** And where the director feels that support deduction is the most appropriate way to enforce that order.

**Mr Elston:** What might be another way of enforcing the order?

**Ms Pilcow:** Garnishment, default hearing, writ of seizure and sale.

**Mr Elston:** But if the recipient has already decided that that other stuff is not very good, then the director probably will say, "Listen, I've been asked to do this." Is the director then going to the recipient to say: "Have you tried garnishment? Have you tried something else?"

**Ms Pilcow:** No. This where a case is already filed with the program. The recipient has not requested it. The recipient is waiting for her money, and the program can then make a choice as to whether or not support deduction or garnishment or a writ of seizure and sale is the most appropriate. That is an option available to the program.

**Mr Elston:** I take it from the way the philosophy of construction of this program is going that the garnishment, we have been told in other processes, is too cumbersome, so would they not just attach the source? I mean—

**Ms Pilcow:** It depends.

**Mr Elston:** These things—it sounds like you are trying to make up ways which will result in this not applying, when in fact this is going to be virtually automatic.

**Ms Pilcow:** For new cases it is going to be virtually automatic. For existing cases, support deduction may not offer a whole lot more than garnishment could for existing cases, because it is already in default. You have not got the payer there in front of you to tell you what the income source is and to start establishing a good payment record from the very beginning.

**Mr Elston:** I guess all I was getting at was we are trying to make the previous presenter feel that he was not going to be affected by this when, if his receiving ex-spouse makes a decision to move on him, then the director will enforce, because it sounds like this fellow has a steady, reasonable income source that has existed for so long and it will be in fact feasible for the director to do it.

**Ms Pilcow:** That is right.

**Mr Elston:** In fact, he should have been told, basically, that if she decides to put him there, then he is done, just like he was suspicious.

**Ms Poulin:** If he is registered with SCOE.

**Mr Elston:** What?

**Ms Poulin:** If he is registered with SCOE. If he is not—

**Mr Elston:** Well, then she can apply to have him registered, too.

**Ms Poulin:** She can apply to have him registered.

**Ms Pilcow:** And I think that is the answer that was given.

**Ms Poulin:** If there is an amicable agreement between the two parties—

**Mr Elston:** No, you were trying to make him feel comfortable that he would not be included in this thing, because you said, "The director has some discretion and you may not be included because you're a good guy."

**Mr Wessenger:** Well, he would not be included, I said, unless his ex-wife requested that he be included.

**Mr Elston:** But that was his whole point in coming here. He said, "I'm afraid that if she decides to go back on me then that will happen."

**Mr Wessenger:** Yes, if she decides to go back. Yes, that is quite correct.

**Mr Elston:** In a moment of pique. And you know, that is the whole problem with this. I think he should have been given the right view. If she decides to bring him into the system, even though he has paid for over 10 years—

**Mr Wessenger:** That is correct.

**Mr Elston:** —then he is in the system.

**Mr Wessenger:** Yes, he is in the system.

**Mr Elston:** Period.

**Mr Wessenger:** Period. That is right.

**Mr Elston:** And the discretion of the director really does not exist that much.

**Mr Wessenger:** Well, I think that was made clear, that if your ex-wife decides—

**Mr Elston:** I am sorry to have taken some time, but it has been quite confusing in this whole issue of malfeasibility and practicability and possibility and—

**The Vice-Chair:** Thank you, Mr Elston. That needed to be clarified.

**Mr Kwinter:** I was going to talk about that. On page 2 of your submission when you talk about these things, I think it is important to know that what we just discussed is really the facts, that the new people will almost automatically be brought in unless they post a financial security of four months to let them out of it. They will virtually all be in, and the old ones can be brought in as long as the person receiving support wants them in.

The other thing that I wanted to talk about was the part 1(a) where you talk about, "On the enforcement side, it simplifies matters in cases where there are reluctant debtors." We have been hearing testimony, and it was just raised by one of the staff members of the Attorney General, that under the old garnishments this will do virtually nothing. If someone is under a garnishment order, the fact that he is now under compulsory income deduction is not really going to help him.

We have heard testimony to the effect that in fact it may encourage people who are not being garnished and who have been making payments, whether they are sporadic or regular, to seek ways of getting out of it, because now they are in a position where some people feel that the minute they become under a mandatory deduction order, this will in some way jeopardize their jobs and it will in fact encourage more people to find ways to circumvent it by skipping jobs or leaving the jurisdiction or doing all of those things. So I was just curious to know your reaction



to that, in that in your presentation you think that just the opposite is going to happen.

**Ms Poulin:** We think that the opposite will happen if all things stated in the act follow through, such as the fines—and we spoke to SCOE about this. Our concern is that unless they follow through with these fines, fining employers, and the changes to the Employment Standards Act about the fact that this will not cause jeopardy to your job, they are going to have to follow through if they find out that there is a case where someone has lost his job because of this and make some fines and yes, make some imprisonments to give this system credibility.

That is one of our concerns that tends to say that if those things are not done, this is going to fail just like a garnishment. A good garnishment should work but there are no teeth there to back it up and people are continuing to get away with it. So they are not working, and the same applies to this. It will work in principle, and on paper it looks really good, but it has to be supported by the court system and supported by SCOE by being tough and hanging in there and putting some people in prison and making some of those fines and letting the public know that these things have to change.

**Mr Kwinter:** The point I was making is that you are putting the onus on the employer and saying that as long as you put some tough controls on the employer it is going to work. My concern is on the employee.

**Ms Poulin:** And the employee. If the debtor does not report his whereabouts, it says in there he can be fined \$10,000 or jailed up to 90 days. Well, if a debtor does not report his whereabouts and they finally find him, then they had better fine him or they had better jail him for 90 days or 60 days or 20 days and they had better do that right at the beginning. If they start doing that, it is going to take a few

times, it is going to take some publicity, and eventually it is going to get through. The idea is to say: "Look, you can't do this. You cannot get away with this. This is the way it's going to be and we're going to start making these things happen."

**The Vice-Chair:** Mr Wessenger would like to make a very, hopefully, short and brief clarification.

**Mr Elston:** Is this a clarification?

**Mr Wessenger:** Yes. There seems to be some confusion.

**Mr Elston:** I think we had better order out for lunch.

**Mr Wessenger:** Well, maybe you should. There seems to be some confusion—

**The Vice-Chair:** I asked him to be very brief.

**Mr Wessenger:** No, there seems to be some confusion here with respect to garnishment and wage deduction. There is a difference. Garnishment, first of all, deals with arrears. Wage deduction is a current obligation. So there is that distinction. The second aspect is, of course, that garnishment extends beyond wages. It can attach a bank account, it can attach federal payments, I believe, of certain types, or commission payments owing. So it is a very useful device in collecting, particularly against self-employed people or people who are not regular wage earners. So it is a very useful collection device which will still be needed and still be required in the system.

**Mr Elston:** Well, it is a successful clarification.

**The Vice-Chair:** I would like to take the opportunity to thank you for coming here and presenting. A job well done. Thank you very much.

The subcommittee will be meeting at a quarter to 2 with the full committee meeting at 2 o'clock.

The committee recessed at 1251.

## AFTERNOON SITTING

The committee resumed at 1417.

**The Chair:** I would like to resume hearings. I understand that we have an agreement from the subcommittee. I suggest that I receive it later after it has been confirmed, probably between two of the later presentations.

**Mr Elston:** I think it is a tentative report.

**The Chair:** Exactly, and that is why it might be important to check it through, Mr Elston. Accords among three parties are not usually arrived at all that quickly. So my apologies to the first presenter.

The recommendations from Monday and Tuesday are ready and I believe Susan has circulated them, and I believe that there is also a response from one of the questions for the ministry staff which has been circulated as well.

**Clerk of the Committee:** Will be circulated.

**The Chair:** Will be circulated, excuse me.

**Mr Morrow:** Mr Chair, can I have a clarification, please? On tomorrow's date, is that—

**The Chair:** It is the 15th.

**Mr Morrow:** —cancelled? Is that cancelled as a clause-by-clause?

**The Chair:** We had that as part of an earlier agreement, I believe, yes.

TADEUSZ LIPINSKI

**The Chair:** I would like to welcome Mr Tadeusz Lipinski.

Mr Lipinski, welcome to the committee. Please sit down. The way things proceed basically is, with yourself as an individual you have approximately a quarter of an hour. You can use that time in whichever way you wish in terms of your presentation. Usually people allow half of the time for questions from the various committee members, who will probably all have an interest in inquiring into your presentation and your viewpoint.

Please proceed whenever you feel comfortable.

**Mr Lipinski:** Is it better to stand up or does it matter?

**The Chair:** Please sit down. It is much handier for you and for the microphone.

**Mr Lipinski:** Ladies and gentlemen, as a piece of proposed legislation considered in isolation Bill 17 cannot be seriously faulted. If there is an honest order to pay support, the bill serves the ends of justice in that the necessary support funds will be received with the least difficulty and with the maximum of reliability. I cannot overemphasize that the support order must be based on an honest judgement made without fear or favour, and that it be based on all the facts, none being disallowed merely to satisfy irrelevant rules of procedure.

Incredibly, however, in the broader field of legislation one of the first things that the present NDP government of Mr Rae did was to declare that the amendment under Bill 124 would not be proclaimed, and it immediately proceeded with the subject Bill 17. That seems flagrantly dishonest on the part of the government, and I would have

thought that a knowledgeable and sincere Legislature would be up in arms over it. The action of the government can hardly be considered a move without fear or favour.

I understand that of the custodial parents about 80% are the mothers of the children involved and they will be guaranteed all the available support. The proposal is now that 100% of the fathers be subject to a python-like constriction to pay up, at the same time refusing those fathers even the partial reduction of access problems which Bill 124 offered them. This does not enhance the credibility of the government which claims to be a government of the people.

Even overlooking the glaring favouritism towards women, what about the children? Do you or do you not believe that the children should see their fathers with the same reliability with which the mothers will now receive their financial support? The frenzied action of the government ignores the totality of the interests of the children. So much for the interests of the children. It does not reflect statesmanship in those responsible for this duo of legislative action.

There is something else that takes place as the two actions are taken together. It demonstrates how the government contributes to the disunity which preoccupies Canadians at present. How can non-custodial parents, treated with such flagrant negative bias, be interested in questions of national unity, especially the status quo? Why should they care whether or not there is national unity when a provincial government will be able to continue pummeling them with biased legislation in the critical area of their family relations?

Surely the NDP claims to be the first of the major political parties to appreciate the importance of respecting family ties in keeping a society and state viable. Mr Rae says, and I quote: "Ontario insists that any overall change to the Constitution be done on a basis that includes everybody." By the pair of actions, the government alienates men and foments even more cynicism about government, and it does so right at the very foundation of the state, namely within the family. The government incites citizens to exclude themselves from taking part in formulating a revised Constitution for Canada. The Constitution is only of academic interest to people placed in that situation.

Mr Rae is also quoted as saying: "Mr Mulroney does not speak for me or for the government of Ontario." Well, Mr Mulroney does not speak for me either very frequently. But, more important in the present context, neither will lawyer Premier Mr Rae, QC, be speaking for me if the pair of actions involving Bills 124 and 17 represents his understanding of the kind of government action which will promote a rally for a united Canada.

Mr Rae, his cabinet and the Legislature should realize that there is a profound sense of discouragement among the people in the province of Ontario too, not only in the province of Quebec. I do not believe that that discouragement is basically over Meech Lake in Quebec any more than it is in Ontario. It is over the fact that legislation in



total, as designed by elected legislators, does not serve the real needs and legitimate aspirations of individual people constituting the electorate. The suppression of Bill 124 and simultaneous submission of Bill 17 is a perfect case in point.

**The Chair:** Thank you, Mr Lipinski. I unfortunately cannot recall where we were in rotation, seeing as I was not chairing the last presentation, but I would like to welcome Mr Phillips, who is going to be with us this afternoon, and suggest that we start rotation with the official opposition. Mr Kwinter or Mr Phillips? No? Mr Carr or Mrs Cunningham?

**Mr Carr:** Yes, I will go ahead if I could. Again I will thank you for coming with your particular interest; you, I think, have put it in a different perspective from anybody else. They have put it in their own way by putting it in a constitutional context. I was just wondering if you could expand, because some of the other people have talked in terms of a Bill 17 challenge through the Charter of Rights and Freedoms. I was just wondering what your thoughts in that area would be as a Canadian with our present Constitution, how you see that.

**Mr Lipinski:** I do not think it is necessary to go to something as unwieldy as the charter. I think that men and women in the Legislature should know in their hearts what is good legislation. Especially this government with this large majority should have no problem in putting through legislation which the people need and which serves their, as I say, legitimate aspirations. I do not think we have to go to such an extent as something as fuzzy and unwieldy as the Charter of Rights.

**Mr Carr:** And without trying to be too personal, and forgive me if I am, what is your particular arrangement? Is it based on the constitutional issue or do you have a personal interest in this particular bill? Maybe you could just enlighten us in that respect.

**Mr Lipinski:** I have a general interest in this bill. I have a general interest in seeing that in this rich country of ours people can live enjoying the fruits of their labour and enjoying their families. What I see is so much that is done which works in opposition to that, and that is what I object to very strongly.

**Mr Carr:** I see. One last question. Again, forgive me for being fairly personal, but have you lived in Canada all your life?

**Mr Lipinski:** I was born in Canada, yes.

**Mr Carr:** Okay, good.

**Mrs Cunningham:** Just a question. You talk about being in favour of this particular piece of legislation and certainly in support of the unity of families.

**Mr Lipinski:** Yes.

**Mrs Cunningham:** And you are concerned about the fact that Bill 124 was not brought back to the Legislature. I think that is up to government members to talk to that as part of their strategy with regard to this whole issue of support and custody. I am going to ask you this question: Do you have any feelings about the automatic deductibility from income for support payments on behalf of the fathers

or mothers who happen to be the ones who are providing the support?

**Mr Lipinski:** No. I thought I made it quite clear that it serves, as I said, the ends of justice in that the necessary support funds will be received with the least difficulty and with a maximum reliability. I qualified it by saying that one must be certain that that order is made honestly, made without fear or favour and is made on the basis of all the evidence that is available.

**Mrs Cunningham:** My reason for asking the question is that there are those who come before this committee who in fact have been making payments regularly, who are not in favour of the government intruding in their personal lives by way of automatic payroll deduction, who have a good track record and who do not feel that this should be something that the government should be looking at for people with good records of payment. Or, people who are brand-new at paying ought to be given a chance; that is the other side of the argument. So I am wondering if you have any comment on that.

**Mr Lipinski:** Yes.

**Mrs Cunningham:** This is automatic.

**Mr Lipinski:** Yes, automatic.

**Mrs Cunningham:** If you become separated from your spouse then automatically the deductions will be made. That is the intent of the legislation. We may have trouble tracking people down in the beginning, but certainly that is the intent—any new custody orders or separation agreements.

**Mr Lipinski:** To me that would not be the most important consideration. As I say, if support has to be paid, I do not think it is too important how it gets paid.

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**Mr Mills:** Mr Lipinski, what I would like to ask you is, do you see the difference between support and visiting rights? Or do you see those being hand in hand?

**Mr Lipinski:** Oh, I most strongly feel that any parent who has to pay support for his children has to at least have his visiting rights. What with the introduction of Bill 17, his visiting rights have got to be as secure as the payments are to the supported person. That is why I object to withdrawing Bill 124 and attempting to institute Bill 17. As in every sphere of life, you have got to get value for your money. Pardon me, I really should not put it in that respect, in that light, because that is not the light I see it in.

Most parents should be able to see their children. If, on top of that, you are going to deduct at source the support payments, then there is no question you should make accessibility to the children just as reliable.

**Mr Mills:** But in fairness to your suggestion, Bill 17 is dealing with support payments. That is the main thrust of the bill.

**Mr Lipinski:** Yes.

**Mr Mills:** We are not talking about, if you pay support, you automatically get accessibility. There are two different issues here. I am just wondering where you are coming from on this.

**Mr Lipinski:** Oh, well, I hope that you do not view this business within the Legislature with blinkers on, sir. Those two things have got to be seen together just as all legislation has got to be seen as a totality of legislation, because that is what the people have to live by. They have to live by the totality, not by one bill at a time. I could not foresee any other occasion on which to point this out except this one.

**Mr Mills:** I take exception to some of the things that you say here, about the "frenzied action of the government." I think the frenzied action of this government, sir, is to take into consideration the rights of the thousands upon thousands of single young mothers who have no visible means of support. They are starving. They are in poverty and that, sir, is the frenzied action of this government, the way I see it. I think it is due and long overdue. I take exception to your term that we are acting in a frenzied state. If we are acting properly and correctly to correct a terrible injustice, in my view, in the province of Ontario, if you term that as being frenzied, I think it is a poor choice of words.

**The Chair:** Mr Lipinski, please respond. We really have run out of time. I know Mrs Mathysen wishes to speak as well, but—

**Mr Mills:** No, please, I asked for his comments—please, sir.

**Mr Lipinski:** I am sorry. Mr Mills, I did say that I fully support this bill with a qualification which hopefully will not apply in the same paragraph. What concerns me is that the bill had already been passed and had been signed by the Lieutenant Governor. Why did the government not let it go ahead? It was all ready to go ahead.

**Mr Mills:** I could tell you why, but I will not.

**Mr Lipinski:** Well, that is unfortunate, sir. Because in fact I was going to ask the committee why it did not go forward. I wonder whether the population of Ontario knows why it is not going ahead.

**Mr Carr:** The parliamentary assistant is here.

**The Chair:** We can certainly discuss that if you wish.

**Mr Wessenger:** Certainly, I would be very happy to. I understand the bill was passed approximately at least one year before the last election. The previous government decided not to proclaim it in effect because, in its wisdom, because of the recommendations made from lawyers and the Canadian Bar Association who were all very critical of the bill, it was felt not to be a good bill. The previous government decided not to proclaim it. This government agreed with that and withdrew it.

**The Chair:** Thank you very much, Mr Lipinski. My apologies again for the tardiness.

HENRY B. RASMUSSEN

**The Chair:** We now have a Henry Rasmussen. People may note Mr Rasmussen's name at a later point on the agenda when he was to be appearing with Fathers for Justice. I understand that Mr Rasmussen is appearing on his own behalf and that Mr Rowsell is appearing for Fathers for Justice. It is a simple switch in timing. Please be

seated, Mr Rasmussen. As you have noticed, you have about a quarter of an hour to use as you wish. Typically, again, members will probably wish to ask you questions about your presentation and ask for your advice. Please feel free to start when you are comfortable.

**Mr Rasmussen:** I am here representing myself and the bottom line of the whole issue is the kids. This is a picture of my daughter here. My ex-wife certainly is not starving.

To the ladies and gentlemen on the committee, I would like to make the following comments. It is fine and noble to have a bill such as Bill 17, but that is like trying to solve a problem with another problem.

With 75% of support orders in default, does that not say something is wrong? I would say that the majority of these people just do not have the ability to pay the amount ordered. The problem really starts with an expensive and complex legal system. Ian Scott in a statement to the Legislature dated 1 May 1989 states:

"Our present court system has been with us since 1881. While it has been frequently modified over the last 100 years to reflect new social needs, the system...has remained essentially intact.... Almost two decades ago, the Ontario Law Reform Commission assigned the blame for public dissatisfaction on 'the nature of the organization and the inefficiency of the system.' Judges, lawyers and lay people alike recognize the essential truth of this statement. For most people, the existing trial court structure is confusing and remote."

As long as the courts are making unfair judgements there will be problems in collecting support payments. For example, I know a person earning \$1,400 per month who was ordered to pay \$900 per month in support. It is hard enough for a couple living together to live on this amount and obviously harder, if not impossible, when there are two separate households. Maybe judges, lawyers and politicians cannot really relate to this because they make an average living. In my own situation, I was initially ordered to pay more than I earned.

Just to show the extent of work put forth by judges, I would like to quote from the first issue of Justice Research Notes, issued November 1990. This is on victim impact statements but is probably a good example of the shortcomings of the judicial system. The excerpt is as follows:

"Judges were interviewed in all but the Toronto project. It is a telling comment on the extent of the use of the statements in court that in two of the evaluations, the judges either had no experience with the statement or were surprised to learn that they had, in fact, heard cases in which a victim impact statement had been obtained."

The word "debtor" is throughout Bill 17. If I understand Bill 17 properly, it would mean every person that has a child becomes a debtor as soon as they become a non-custodial parent. This means that there is no difference between a person willingly supporting his or her child and a person doing it unwillingly or not at all. According to Bill 17, they are all debtors. This is most unfair to people who are doing their utmost in supporting their children.



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Howard Hampton, our Attorney General, is quoted as saying, "We want to see the payment of support orders become something that is not discretionary, so it becomes a social duty just as paying your taxes and your deduction to Canada pension." It is not something discretionary you pay for after you buy a new car. I guess you could say, if you do not want to pay taxes, you just do not work, or if you do not want to support a child, you just do not have children. However, if you buy a car and you cannot pay for it, they will take it away from you. Does this mean that if you do not pay enough support, they will take your children away?

In closing, the government should take a look at making the system more accessible and simplified to people of all economic situations so that people are not drained financially and emotionally, because the true losers are certainly the children.

**The Chair:** Thank you, Mr Rasmussen. Mrs Cunningham—I am sorry, the rotation would start now with the Tories.

**Mrs Cunningham:** Thank you very much for coming before the committee. It must take some courage, some days, to have to tell your story so many times. However, I am hoping that because of the witnesses who come before this committee that we will, through amendments, be able to make some changes, and I am happy to tell you that the word "debtor" will not be in this legislation. Am I correct?

**Mr Wessenger:** Yes, you are correct.

**Ms S. Murdock:** Presuming we approve of the amendment, yes.

**Mrs Cunningham:** I would suggest that the other side get their act together so we can be assured that the word "debtor" will not be in there.

**Ms S. Murdock:** "Debtor" will not be in there.

**Mrs Cunningham:** So I thank you for that, Mr Chairman. I was saying that with a smile on my face. You must not get uptight.

**The Chair:** No, I quite appreciate that. It sounds like that amendment may well have all-party agreement.

**Mrs Cunningham:** Yes, I think you are looking very happy right now. We should be happy about that.

I think that you raised one of the issues that has not been raised as frequently by witnesses as it has by some of the members of the committee, and that is the need for education, certainly of judges. I am very much aware of victim impact statements and family court clinics and supervised access and all those things, and if I had my druthers, I would put the taxpayers' dollars into programs that help families that are going through these tough times and not more legislation. So that is where I come from.

I will also tell you that I am not in favour of an automatic deduction from paycheques from people who have a track record of supporting their families, and I am not in favour of more intrusion into personal lives of families either. So I thank you for coming before the committee to support what I think is also your opinion.

I will ask you, though, in your experience, have you had to deal with SCOE at all?

**Mr Rasmussen:** Oh yes.

**Mrs Cunningham:** And how has it worked for you?

**Mr Rasmussen:** Not too well. I got separated five years ago and I went through hell with the court system and I am just sort of psychologically, emotionally getting back into shape, so I am getting involved with them now and I just sent them a letter the other day requesting information that I could not get anywhere else.

**Mrs Cunningham:** Do you feel free to pick up the telephone with this office?

**Mr Rasmussen:** I do, personally, but I talk to a lot of guys who do not have a clue what SCOE is all about, and everybody just has to be educated to what the system is all about. I am just learning the system within the last six months.

**Mrs Cunningham:** I will remind you that government services are there to serve you.

**Mr Rasmussen:** Oh, I found that out.

**Mrs Cunningham:** So do let us know from time to time. There are others on this committee who have had a lot of experience. I am sure they will ask some questions, but I basically wanted to thank you for being here and helping me along when I try to get my amendments through later on. Thank you.

**Mr Carr:** Did we lose our time? Is that it, Mr. Chairman?

**The Chair:** If you would like to. With the 15-minute presentations, I had suggested one question per caucus. Are there questions from the government caucus?

**Mr Mills:** I have got one.

**The Chair:** Mr Mills, okay, thank you.

**Mr Mills:** I have a comment that I would like to make, sir. You say that support orders become something like a social duty, just as paying your taxes and your deductions to Canada.

**Mr Rasmussen:** No.

**Mr Mills:** Oh, I beg your pardon, I see. I stand corrected. You are implying to me that you want to have some discretionary opinion about whether you should pay support to a child. Is that what you are saying?

**Mr Rasmussen:** No, that was a quote from Howard Hampton.

**Mr Mills:** No, no. You are saying that if you buy a car and you cannot pay for it, they take it away, and does that mean if you do not pay enough support, they will take the children away. Are you sort of implying that if—

**Ms S. Murdock:** That is not—clarification, Mr Chair?

**Mr Mills:** I am sorry, okay.

**Mr Rasmussen:** Howard Hampton is implying—

**Mr Mills:** No, no.

**Ms S. Murdock:** Can I have a clarification here, because I am not understanding. The quote is in the first paragraph of page 3, but the block capitals are your opinion?

**Mr Mills:** Yes, that is what I cannot understand.

**Mr Rasmussen:** That is not my opinion. That is a quote from Howard Hampton.

**Ms S. Murdock:** The second paragraph?

**Mr Mills:** The block.

**Ms S. Murdock:** Because it is not in quotation marks.

**Mr Rasmussen:** Oh, where it says, "I guess you could say."

**Ms S. Murdock:** Yes, from there on, is that not your opinion?

**Mr Rasmussen:** Well, that is, yes, that is my opinion of Howard Hampton's statement.

**Mrs Cunningham:** Mr Hampton does not usually make silly statements, but this is a silly statement.

**Ms S. Murdock:** The first paragraph.

**Mrs Cunningham:** The first paragraph, in my opinion.

**Mr Rasmussen:** I got it out of the newspaper, so it might not be exactly true. But I have the clipping.

**Mrs Cunningham:** You are very funny. That is nice.

**Mr Mills:** I just could not see who was quoting what, there, that was the difficulty I had with—

**Mrs Cunningham:** The quotes are around the first words.

**The Chair:** I think Mr Rasmussen does make a significant point. I have certainly noticed quotations around remarks I have never said. Go ahead.

**Mr Mills:** I would like to know, sir, how you think that the government would best deal with the tragedy of children not being cared for by parents who refuse to come to grips with their responsibilities. After all is said and done, if you have a child, I feel that you have a social responsibility to that child to care for it and I see that you seem to have some difficulty with that and you are simplifying it to economic situations. How do you feel about this? Do you feel that people do not have a social obligation to support their children?

**Mr Rasmussen:** Oh, definitely, they should be supporting their children, but there are so many people in it from different economic backgrounds. I am a bricklayer. In my own personal situation we, my wife, myself and the family, managed to survive and get some better things that other families could not, and when we split up, we created two separate households. The court system is so intimidating and to me it is not accessible to a person who does not have unlimited funds to go out and hire a lawyer. If a person is at that level where they are not that poor to get legal aid but they are not that well off to go out and hire "a good lawyer" or whatever, then they are stuck right in the middle or just above the middle and it makes it very difficult.

**Mr Mills:** So I get the tone from you that if you earn a nice living somewhere, our responsibility to a child should be adjusted to reflect that, and if you, as you say, are a bricklayer with less money, your commitment to your child should be less, or based on what you have available. Is that really the thrust of what you are trying to say?

**Mr Rasmussen:** No, no, I am not saying that. I do not really have an opinion on that, because there are people out there who—God, some people make over \$80,000 a year and some people make under \$20,000 a year, so how can you, say, put a value on raising a child in that respect? I cannot do it, I could not.

**Mr Mills:** I am asking you if that is what you intended?

**Mr Rasmussen:** That is not my opinion.

**Mr Mills:** Okay.

**The Chair:** I believe Mr Kwinter has a question as well.

**Mr Kwinter:** Mr Rasmussen, I am interested to know when you are—page 2, when you talk about how you were initially ordered to pay more than you earned, can you tell me the circumstances that led to that?

**Mr Rasmussen:** That was supposedly my first court appearance and I still do not understand the system. I am still in the court system and I am supposed to get a date but it has been over a year now waiting for a date. But what happened there was, initially, when a person goes to court in a separation situation, they are told by the lawyers that it is not necessary for you to be there. So in my personal situation—I am self-employed and my gross earnings were \$120,000, including all material, equipment and labour, all my expenses. I guess the judge believed I made \$120,000 net and I was ordered to pay—I do not have the figures with me, but it worked out to just under \$50,000, where my net was under \$30,000.

When a lawyer comes back to you and says, "Well, this is what the judge ordered," and you look at it and it is more than you make, then what do you do? You have got to go back into the court system, into the higher court, and that costs money.

**The Chair:** Thank you very much, Mr Rasmussen.

**Mr Rasmussen:** Thank you.

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ANDREW AXHORN

**The Chair:** Our next presentation is from Andy Axhorn. Mr Axhorn, as you have noticed, typically you present for a while and then probably the committee members will have some questions for you. Please feel free to start whenever you are comfortable.

**Mr Axhorn:** Thank you. I object to Bill 17. I believe it is repressive, intrusive and offensive. It presumes that I am guilty without the opportunity to prove my innocence. Whatever happened to innocent until proven guilty? It is not my employer's responsibility to pay my bills. It provides access to assets accumulated since the separation and divorce. She has already been given everything once, including my daughter.

The bill requires that I report a change of address to yet another government body. I do this on my federal income tax reports and to my banks, approximately 30 other various businesses, associations, levels of government, my daughter and my ex-wife. I am divorced; I am not a criminal and I am not on parole. The term "unconscionable" is



ambiguous and does not clearly define who is in good standing and who is not.

In my opinion, the question of support needs to be tied in or related to that of custody and access. I believe that in a great many of these cases funds have been cut off as this is the only defence left available to us. This is the only way that we can get anyone's attention. I almost did it myself. Bill 17 will guarantee the continued inequities divorced men face.

When a woman has to deal with non-payment, she has mechanisms put in place by three levels of government. In the Metropolitan Toronto area there are a minimum of 50 support groups and organizations to turn to for help. A simple phone call is all that is required.

When a man is arbitrarily denied his access or custody, his only route is another expensive court battle that in all probability he cannot afford. Where do we turn for the support that we need to grieve the loss of our children? I am sorry. I cannot go on. These are my cancelled cheques.

**The Chair:** Take a moment, Mr Axhorn, please. There is no pressure to continue right away. Would you like a glass of water?

**Mr Axhorn:** Yes, please.

**The Chair:** These are very difficult proceedings when people are talking about the issues that are the most important to them. It is for that very reason that I think we value testimony like yours and that of other fathers and mothers who have been before us. So, although it is difficult, please rest assured that we certainly appreciate your presence.

**Mr Axhorn:** I will try and go on. Thank you. I apologize.

We have cleaned up some of the agony of divorce with the Family Law Reform Act, but we did not go far enough. I feel it is long overdue that we address the problem of unnecessary, unconscionable legal fees. OHIP limits the amount a doctor can charge for saving a life. Why can we not limit the amount the legal profession charges to destroy one? I would welcome the introduction of legislation that would curb the legal profession and regulate their fees for a specific procedure.

Joint custody was an issue previously brought before Parliament but not passed. I believe that this bill should be resubmitted and some accountability put into the system. Joint custody should be automatic unless some gross misconduct can be shown at trial by one of the other parties. By that I mean a trial; I do not mean trial by defective affidavits, erroneous financial statements, innuendo and in some cases bald-faced lies. I would encourage anyone to reintroduce a bill that would address this matter.

These are the minutes of my settlement. That document required three years of litigation, approximately 13 court appearances and \$10,000. This document is not worth the paper that it is written on. It says that I will pay a set amount each month for the support and maintenance of my daughter. These are my cancelled cheques, including one dated 1 February 1991. None have ever been late, none have ever been short; they have all been paid in advance.

This document gives me specific rights to access, education and medical information. I last saw my daughter 22

September 1990. That is almost five months ago. Every attempt that I have made to contact my daughter has arbitrarily been blocked. Educational information is being withheld. Only very recently was I provided with a transcript of my daughter's school marks, the first that I have had in six years, over six years. I have never been invited to attend a parent-teacher night even though prior to separation I attended every one.

I would like to just very, very briefly mention that the amount of money that is outstanding, I understand, is horrendous; it is \$360 million, I believe. That is not my bill. I believe that these children should be looked after. I have looked after my obligations. Do not penalize me. Do not tar me with this brush.

This document was \$10,000. The other side's had to be the same. That is \$20,000. That money would have better been spent in putting it into a trust fund for the kid. We go to a dentist because we need our teeth fixed; we go to an electrician because we need wiring fixed; we go to a lawyer because we do not know what we are doing. I have never defaulted on my support payments. I will not in the future. I can understand why some guys are confronted with these problems—because of the type of treatment by ex-spouses and a judicial system that is either unwilling or unable to dispense justice equally without gender bias.

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**Mrs Mathysen:** It sounds like your problems, sir, are something that are outside the realm of mortal politicians to resolve. You spoke of some financial concerns, and I wonder, do you think if there was an automatic process in place, like child support deductions, that you might in fact be alleviated of some of that financial burden? Would it make it easier if it were an automatic kind of thing, as Bill 17—

**Mr Axhorn:** No, I am opposed to it. Again, I believe that I have handled my obligations to my daughter in an honourable manner and I do not require a government clerk to pay that bill for me.

**Mrs Mathysen:** So your problems, though, are something outside of financial. Your concern is the access question.

**Mr Axhorn:** My concern is that I paid my money to get this. The majority of that money was paid because of access—property was not a problem—because of access. I cannot afford to pay \$180 an hour to go back and fight for something I have already paid for. Why do I have to?

**Mrs Mathysen:** Well, this bill does not deal with access; it just deals with support.

**Mr Axhorn:** But it should. I believe that it should.

**Mrs Mathysen:** And you think they should be connected.

**Mr Axhorn:** I believe that they should be linked in some manner. What do I do? Do I go on the rest of my life without being able to talk to my daughter?

**Mrs Mathysen:** How would connecting access to support help your situation?

**Mr Axhorn:** I guess I feel like you are giving the other team all the marbles.

**Mrs Mathysen:** But how would it help you? I am talking here about helping you. It sounds to me as if your family situation has become very difficult and I am asking you how connecting access to Bill 17 would help you.

**Mr Axhorn:** Well, if she is not going to get paid, I am going to see my daughter.

**Mrs Mathysen:** But what about your daughter? What if there is no grocery money? How is that going to help—

**Mr Axhorn:** My daughter is not going to starve. In my personal situation, you know I am sympathetic. I have empathy for all these children. On the large scale, the social scale, yes, they are part of my responsibility, but they are not my responsibility per se like it is not my responsibility to pay this gentleman's hydro bill. So again, I would take the responsibility of my daughter and I would ensure that she is fed, one way or another, and that is not the issue. I feel like my daughter is being held for hostage and sold back to me one toenail at a time. The rights that I fought for here are being arbitrarily denied me anyway and there is nothing that I can do about it because I cannot afford to. And I am saying, who will help me?

**Mrs Mathysen:** I am wondering, though, if you connect access to support whether or not you are holding a mother, a custodial parent, hostage in the way that you resent being held hostage.

**Mr Axhorn:** No, and please do not misunderstand me. I guess what I am looking for is some accountability. You have my child and you are telling me that it is none of my business whether this child—she could be in the hospital now. I do not know and I am not going to find out because she is not going to tell me. And if I were to call her and say, "Well, let me talk to my daughter," all I am going to get is a telephone answering machine and that message is going to be erased. If I continue to call, then she is going to charge me with harassment. But the other end of the stick is, all she has got to do is pick up the phone, and I think this is very unfair.

**Mrs Mathysen:** Okay, but are your problems something that is outside the political arena's control? Are you talking about a personal situation over which no legislation in the world can fix?

**Mr Axhorn:** No, I think the legislation could fix it and I think that if a guy is not going to make his child-support payments because the payments on his Harley-Davidson are too expensive, that is not my problem. Put him in the slammer. Do whatever you have to do with him. Get that money out of him. I do not want that coming out of my tax dollars. That is not my problem. Pay up. But I am looking for some accountability out of this person. I am looking for somebody to say to this person, "Listen, a judge agreed that this is what you should be doing. Now, why aren't you doing it?" without it costing me a fortune, and I cannot do that. There is nothing in place for me to do that with.

**Mr Elston:** The concern that you have expressed is a good one here. First of all, the issue of cost, and of course this bill has not got the flexibility in it to allow any kind of

variation on it. We have been talking about that on and off here because if somebody has been making payments all along there is only one way you can get out of it, being in the support and custody order enforcement branch, and that is on consent, or somebody might figure it is unconscionable or that it is not "feasible," or what you were about to talk about, to bring you into the program.

I want to ask you about whether or not you make other payments on behalf of your daughter. Do you send her gifts or do you make payments on account of music lessons or anything like that?

**Mr Axhorn:** Yes, I have traditionally participated up to 50% and in some cases more than that in things such as summer camps. She needed a new bicycle so I paid for half of her bicycle and I bought her a new bicycle for my place, too—that kind of thing. That has never been a problem.

**Mr Elston:** But do you understand under this bill that if you made extra payments or if you made payments in addition to what was required by the order that SCOE would send those back to you? They would not be sent on to your daughter or your former spouse. Would you suggest perhaps that we consider making some kind of a flexibility provision in the bill that allowed those to go through?

**Mr Axhorn:** I would rather be left with the option of spending the money on the child myself so that it does not look like it is always coming from the other party. That is one of the problems. Everything gets taken off you. They take all your money off you. The child comes to see you and the kid says, "What are we going to do today, Dad?" "Well, we can't do anything because everybody just took all my money." So you end up feeling like you have to catch up all the time.

**Mr Elston:** So in your situation where you actually provided all of your payments, did all the support, that what you really are longing after more than anything else is the personal contact and the direct contact with your daughter.

**Mr Axhorn:** Of course, and a gentleman whom I spoke to approximately a month ago put it very eloquently. I said that I agree and I equate this to the loss of my father. He said, "Well, of course, when your father died you lost your past and now that you've lost your daughter you've lost your future," and that is exactly how I feel.

**Mr Elston:** I think this presenter has put the issue of the non-defaulting payer in a particularly new way for us, the sense that the intervention of SCOE in a long history of support being paid and everything will mean that there is another intervention between him and his child, between him and his past and his future, and I think that is a very telling piece of information for us, in that we have got to strive to make sure this bill does not do something more to drive a bigger wedge deeper between people who want to participate in their children's upbringing. I really appreciate the testimony that was given to us this afternoon.

**The Chair:** I believe we have spent a fair bit of time. I would like to thank you very much, Mr Axhorn.

With the committee's indulgence, I think it is fair to share that the person whom Mr Axhorn was quoting was



myself and we did converse about his coming, but I only introduced him to what the process was going to be like.

1510

STANLEY FISHER

**The Chair:** Stan Fisher—is he here? Mr Fisher, I note you have been observing the proceedings. Basically, you have, as you know, 15 minutes. We did not finish the rotation last time so at the outset of the rotation it will be Mr Carr most likely who might be asking you a question to start with. Please feel free to start when you wish.

**Mr Fisher:** I wish to thank the committee for the opportunity to address this Bill 17, which I did not know about until I read it in the paper. I wish to state at the beginning that I am in agreement with the main thrust of this amendment, which is to collect support payments from those individuals who shirk their responsibility for whatever reason and perhaps to make the collection of the support payments easier for the agency responsible for said collection. But I feel that I must make you aware of some deficiencies within this act that are very personal to me.

In the article in the paper, you talked of automatic deductions. To me, this means garnishment of wages. To someone who has acted responsibly, which I consider myself, this has a certain stigma attached to it that I consider to be painful, both emotionally and socially. My cheque is open to my employer and certain staff where I work and it would seem to be an invasion of my privacy, as you have just stated previously with some other individuals that you were trying to be aware of.

The second point I would like to make is that I spent three painful years in working out an agreement through lawyers at considerable expense that was agreeable to all parties. Now you come along with an act to alter this agreement's workability.

On the third point I would perhaps like to start with a question. Being salaried, I would like to know how you are going to propose making these deductions from someone who is self-employed. I phoned this committee and they simply said that I would have to ask this question. So I do not know how this is going to come about, but if it is only the salaried people who are going to be deducted, to me this smacks somewhat of discrimination against the salaried sector of the population. But I would like to hear what you have to say in reference to that.

The last point is the one that really moves me in reference to this bill. It is the most disturbing one as well. The collection agency right now is the Ministry of the Attorney General, custody and support enforcement branch, to whom I send a cheque every month without fail. In the past two and a half to three years I have received letters from this agency indicating that I owe them money above the set amount that was set out in my divorce proceedings.

Phone calls by myself to this agency are a waste of time as I can never seem to get through. The line is somehow continuously busy. I then turn to letters that I wrote them to ask for clarification on where these amounts come from. One of my letters was answered; all other letters were not. The figures they seem to throw at me, I do not

know where they come from. I assume, I could be wrong, that the case that they have on file is in error. I think that is the case because of one of the letters they have sent me and they seem to be under the impression I should be paying so much amount and I have got a statement signed by a judge that says that I should be paying not that amount. So there is a discrepancy there, which I sent them. When I send them proof of my figures and agreements and cancelled cheques, I receive nothing back, even though I indicate on the letter, "Please let me know if I am right or wrong." Now you are asking with this act to put this agency in charge of automatic deductions from my salary. I dread what would happen to me financially if they can just go ahead and start doing what they are doing with letters automatically.

In closing, I would like to ask that you weigh very carefully the effect of this act on both parties and perhaps consider not to enforce the act on those who are responsible, which I consider myself to be, as opposed to those who are irresponsible. Why should I have to suffer for someone else's irresponsibility? I am living up to my end, as a lot of other gentlemen have said here as well. I just want what is fair. Thank you.

**The Vice-Chair:** Thank you very much.

**Mr Carr:** I take it the amount they are taking off is higher than—

**Mr Fisher:** No, it is not.

**Mr Carr:** It is lower?

**Mr Fisher:** No, it is not. It is reasonable. Hang on, what do you mean, the amount?

**Mr Carr:** The difference. You say they are not taking off the correct amount.

**Mr Fisher:** It is higher. Their amount, their figures are higher.

**Mr Carr:** Than what the judge ordered you to pay?

**Mr Fisher:** Yes.

**Mr Carr:** So consequently that is, how is that fixed? Is that—

**Mr Fisher:** I keep telling them this is the amount that I should be paying. I send them the court order and I keep sending the cheques. The last correspondence, as you will notice, was in September when they said I owed a considerable amount of money in arrears and I asked why, and I have yet to hear why after I sent them in all my cancelled cheques. I had to go through a small expenditure just to get those and I sent that to them along with my divorce proceedings, and I said to get in touch with me.

**Mr Carr:** So the system now is that the 75% that are in arrears, technically, by the—

**Mr Fisher:** But I am asking for information which I do not seem to get.

**Mr Carr:** And how long has this process been going, that you have been trying to get clarification and writing the letters and calling?

**Mr Fisher:** I think the first letter that I gave you is dated back to 1988.

**Mr Carr:** And what happens when the calls come? You said you cannot get through?

**Mr Fisher:** I do not get calls.

**Mr Carr:** No, when you call them.

**Mr Fisher:** The line is busy. I try to call them. I assume that they start work at 9 o'clock. I would call at one minute before nine. I would call continuously at work. It is just hopeless.

**Mr Carr:** And what happens with the letters? You do not know?

**Mr Fisher:** In the only letter that I did get back from them, a young lady did indicate where they got their figures and it was wrong. What I basically have to do is take a day off work and go down there and find out what they have on file on me because the two just do not seem to go together.

**Mr Carr:** But you do not have to go back to court then? You do have the written—

**Mr Fisher:** No, I do not. I assume I do not have to go back. I do not want to.

**Mr Carr:** No, obviously, because of the time and the cost involved in that.

**Mr Fisher:** That is right.

**Mr Carr:** I guess what I am getting at is that we keep hearing about the 75% that do not pay, but technically you are one of that 75% even though you are making that payment.

**Mr Fisher:** That do not pay?

**Mr Carr:** Yes. That is what you are technically. You would be classified under their system as—

**Mr Fisher:** I pay every month.

**Mr Carr:** That is what I am saying.

**Mr Fisher:** What do you mean, I do not pay?

**Mr Carr:** You pay, but under our system you would be considered in arrears even though the mistake is not yours and that is why when they talk about the 75% figure. It is basically erroneous.

**Mr Fisher:** Okay.

**Mr Carr:** That is what I wanted to make you aware of.

**Mr Fisher:** I see what you mean now.

**Mr Carr:** And I guess what you are saying is you would like the provision for whatever number of fathers that would pay, mostly fathers—you would like to have that option to continue to make it optional. That if you feel responsibility and you want to pay, you want to have that option rather than having it taken off your pay.

**Mr Fisher:** Well, most definitely. I really feel it is an invasion if one is living up to one's responsibility, which I consider I was.

**Mr Carr:** I have asked this many times to many groups, and nobody seems to know; you are obviously connected with a group of fathers that probably—

**Mr Fisher:** No, I am not. I am just strictly individual.

**Mr Carr:** You are. Okay. I was just wondering if you— Actually, if you are not part of a group, there will not be a question, then.

**Mr Mills:** Sir, I am trying to come to grips with this problem that you have where they are taking too much money off you.

**Mr Fisher:** No, they are not taking too much money. They are asking for arrears. No money has been taken off.

**Mr Mills:** Okay. Looking through this, and I may be totally wrong, it would appear to me that what you are saying is that the judge made an order for X number of dollars. Right?

**Mr Fisher:** Yes.

1520

**Mr Mills:** And then subsequently, without going to a judge, the Statistics Canada—the cost of living index put that payment up 4.2% retroactive.

**Mr Fisher:** That is right, that is right.

**Mr Mills:** Is that where you say that that has been added and—

**Mr Fisher:** To an incorrect figure.

**Mr Mills:** So the 4.2% is not incorrect?

**Mr Fisher:** No.

**Mr Mills:** What is incorrect?

**Mr Fisher:** The amount that they are taking 4.2% of.

**Mr Mills:** Oh, I see. So the whole problem stems from the judge's order and what they are taking off.

**Mr Fisher:** Since that judge's order, I have had another judge's order on the amount and it seems that this agency does not have that other judge's order, but they do now because I sent it to them.

**Mr Mills:** Yes.

**Mr Fisher:** But I have no proof of that because I have got nothing back. And I have just learned now that I should start documenting and keeping everything.

**Mr Mills:** Yes, yes.

**Mr Fisher:** And I learned it too late. This is all the stuff that I have that I can throw before you.

**Mr Mills:** Thank you for that. I am a bit of an optimist and always have been, and I kind of think that when we get into this new system it is going to be better and that an automatic deduction devoid of, shall I dare to say, human error would be much more correct. Do you see through your experiences with SCOE—

**Mr Fisher:** I do not even know what SCOE is. This is the first I have heard of it.

**Mr Mills:** Oh, I am sorry. Well, the deductions that are happening now, do you see that the new system based upon the old system is going to be as bad or do you not think that it may be better? It could be better, because it is a different system. It will be automated.

**Mr Fisher:** It will be better if the system is correct, but I have no faith in this system right now. I dread what is going to happen to my paycheque. I dread that I am going to have to go to court to fight for money that has been taken off that should not have been taken off or has not been explained to me.

**Mr Mills:** Yes.



**Mr Fisher:** And it is going to cost me money to get my money back, if I get it back. It is putting me in a very disadvantaged position.

**Mr Mills:** From time to time I suppose some of us have experienced that to a degree with the federal government with our income tax, and I know where you are coming from. Thank you.

**Ms S. Murdock:** I think I was—

**The Chair:** You were, but there is one question per caucus with the short presentations. With the indulgence of the Liberal caucus, Mr Phillips, please.

**Mr Phillips:** Your first two issues, I think, Mr Fisher, are around the automatic nature for someone who is prepared and is actually fulfilling their obligations. Do you have any disagreement in principle with the automatic nature for those who have shown they are not fulfilling their obligations?

**Mr Fisher:** None whatsoever.

**Mr Phillips:** So in theory, the three quarters that are not—

**Mr Fisher:** That is right.

**Mr Phillips:** —you would have no trouble with it.

**Mr Fisher:** That is right. None whatsoever.

**The Chair:** With the indulgence of the committee, the parliamentary assistant wanted to address—

**Mr Wessenger:** Yes, I would just like to advise you that the staff are going to be looking into this case to determine if there has been an error and to sort it out.

**Mr Fisher:** Did you notice on each of those sheets there is a different name continuously? I do not know who to even deal with any more, it is mind-boggling.

**Mr Wessenger:** I am sorry you really had to come here to sort of get it—

**Mr Fisher:** That is why I am glad I am here because I figured at some point someone is going to hear what I am saying and maybe that might rectify itself.

**Mr Wessenger:** I hope that we can get it corrected for you. Thank you.

**The Chair:** Thank you very much, sir.

We would now like to hear from Robert Mallysch. I believe the next group is waiting in the hall. The clerk will, I am sure, try to alert them.

**Mr Fletcher:** Is Mr Mallysch not here?

**The Chair:** No.

#### CITIZENS' ADVISORY COMMITTEE TO THE SOCIAL SERVICES COMMITTEE OF THE REGIONAL MUNICIPALITY OF OTTAWA-CARLETON

**The Chair:** Ms Lalonde?

**Ms Lalonde:** Yes.

**The Chair:** Thank you very much. You are presenting on behalf of the Citizens' Advisory Committee to the regional Social Services Committee of Ottawa-Carleton?

**Ms Lalonde:** Yes.

**The Chair:** We have a half an hour as you are presenting on behalf of a group, and typically the presentation

is entirely up to yourself, but often divided into half of the time for your presentation and half for questions from the committee members. Please feel free to start whenever you are ready.

**Ms Lalonde:** I am representing the Citizens' Advisory Committee which is a committee of people who are currently on social assistance or who have been on social assistance, and front-line workers. Our purpose is to advocate for improvements in legislation and to ensure that people are receiving the entitlements that they have.

I must apologize, by the way, that you do not have a copy—oh, you do, okay. I am not going to read through the whole thing; I am just going to summarize through it.

We have a couple of overriding points. We consider it absolutely vital that support payments are not in any way tied to access and are glad to see that the proposed legislation maintains that separation, although it often does not get played out that way in everyday life. We are pleased to see that support obligations and the enforcement of them will be made universal. You are moving away from the delinquent, bad-guy approach to a recognition of support as a social responsibility, and we feel this will remove some of the adversarial aspects of post-family relationships.

We cannot emphasize enough the importance of arm's-length enforcement. Many of the women we are involved with are victims of abuse and these are particularly important situations where we feel that you should not be subjected to the ordeal of having to first of all go through the court process to get the order and then spend the next 10 years or whatever running after to get it enforced.

We have some concerns about specific parts of the legislation. In subsection 1(3) you are defining a person who is required to pay support as a debtor. The word "debtor" has some very negative connotations. If someone says: "Joe is a debtor" you know that is bad. So we would like to see that only used for people who are in arrears, and—

**The Chair:** If I could help you with that, actually, we had discussion before. There is an amendment from the government which seems to have consensus whereby that phrase will be changed to "payer." It has not, of course, been adopted as yet but it seems it may.

**Ms Lalonde:** Ah, so you have already read our brief. Okay. In the same section there is a definition of income source. Clause 1(1)(f) of this definition says "income of a type described in the regulations" which we hope includes the income of self-employed people. If you are self-employed you do have an income source. It happens to be the same as the recipient of that income, and we feel that this should be subject to the legislation. There is a perception out there that the little guys are the ones who are getting caught and the big guys can play around with what their income is, and when they get it and so on are able to slip through and get away. When an original support order is made, the payer has to provide financial information which includes a monthly income, and we feel that could be invoiced in some way.

We are very pleased to see that under section 3i arrears are not going to be reduced or wiped out. This has been

one of the most unjust procedures under the previous legislation, that someone could fall in arrears and then go in and cry to the judge and say, "Well, gee, Your Honour, I do not have \$4,000," and His Honour would say, "Well, okay, give her \$1,500 and we will call it quits." Meanwhile, she is out the change. We would like to see, if the court is going to consider giving the debtor a longer time to pay his arrears, that not only the debtor's financial situation be taken into account but also the creditor's, because that money may be more important to her than it is to him.

1530

Section 14 amends the Employment Standards Act to cover people who have a job from being discriminated against on the basis of having this order against them. We do have a concern about employers who might not hire you in the first place. We would like to see this made a prohibited ground of discrimination in hiring because there are employers who have, for whatever reasons of their own, problems with the fact of divorce in society. The example we have given is a man applying for a job as a janitor at a church or a religious school. If he has to say at the beginning, "Yes, I have a support deduction order," they know he is divorced and that may be a reason for not hiring him.

Our experience with SCOE has been that it is a complete bureaucratic nightmare. It takes months to enforce orders and it is very difficult for a woman, once her order has been filed, to get any information about what is happening. And it is absolutely essential that any new system be appropriately staffed and funded, so that the legislation can be appropriately enforced. We do understand that the intention of this legislation is that most orders will be taken care of through this system and it will work, so that resources will be freed up to chase after the delinquents, which is okay if it works.

We have some concerns which relate specifically to confidentiality of information in situations of abuse. These concerns would apply to other people, but our major concern is abuse situations. We feel that it is very important, for people who are receiving support from an abusive partner, that that does not put their children or themselves in danger. Under the legislation, section 12 makes it an offence to release information about the payer, but there is no reference to information being released about the payee, and we would like to see that all information about the payee should be held in strictest confidence and it should be an offence, just as it is for the payer.

In cases where there is a break in payments because of job change or arrears, we feel that the province should cover the payment and then recover it from the payee in whatever you consider an appropriate manner. You are asking the women to trust in this plan working and if in fact you have faith that this is going to work, put your money where your mouth is. If it is going to work, then you will be able to get the money back from him and if it is not going to work, then she will not be able to get it back from him either.

The ultimate protection, we feel, for women who have been abused would be a national registry or agency which would receive support payments. If a woman is hiding

from an abuser and, for example, the court order is being enforced in the Ottawa area office of SCOE, how long do you think it is going to take him to figure out that she is hiding in the Ottawa area? Once he can narrow it down, it makes it a lot easier for him to find her.

There are several questions of clarification that we would like to ask. The name of the legislation is being changed from the Support and Custody Orders Enforcement Act and we want to know why "custody" is being dropped from the title. Does this mean that it is being placed in the second class or something?

Section 3f is not very clearly worded. We assume it means that only the court can vary an order and that collusion to evade a support deduction order is a waste of time and is illegal and so on. We would like to see that collusion made an offence under section 12b and we would like it clearly stated that only the court and not the parties can vary an order. In other legislation it is stated quite clearly in that sense.

Subsection 3(7) refers to the enforcement within Ontario borders from other jurisdictions. We would like to know how orders from Ontario will be enforced in other jurisdictions. Will you attempt to have this order enforced there? And also, can these be enforced against the crown in right of Canada? This is obviously of concern to people who live in the Ottawa area, because many of the payers are federal government employees, and it is only recently that it has been possible to garnishee a federal paycheque. So we would like to know if the garnishee legislation that was passed will allow for this type of an order.

The recommendations are summarized on the last page, so I will not go through them.

**The Chair:** Thank you very much, Ms Lalonde. You have both recommendations and questions. I do not know if the parliamentary assistant would wish to take time from the government caucus to address any of the questions.

**Mr Wessinger:** I would like to reply to one question and that is your question, "Will support deduction orders be enforced against the crown in right of Canada?" Presently we do not have the agreement of the federal government to have it apply, so that means that garnishment will still be the only means of collecting the federal payments, but we are working on it and we hope the federal government would be amenable to that type of agreement.

**Mr Mills:** I take it, then, with the exception of these recommendations, that you are in favour of the bill?

**Ms Lalonde:** Yes, we are.

**Mr Kwinter:** On your second page, item 2, you talk about how it should include the earnings of self-employed people. The problem with this particular Bill 17 is that it really is a collection bill. It does not deal with the broad aspects of support and access and everything else that goes with it. It is really a process whereby we hope to improve the collectability of support orders, and that is really all it deals with.

What I would like to hear from you is, do you have any ideas as to how that would be improved by, say, providing in the bill that the self-employed people be invoiced? Right now, if you are self-employed you go to court with



your spouse, you get a court order and you have to pay. If you do not pay, the spouse who is not being paid has the option of going back to the court and getting a garnishee. I am just curious to know what mechanism you see for improving that in this particular act.

**Ms Lalonde:** The reason that we are specifically mentioning that is that it does not appear from the list of income sources that self-employed earnings are included, which is a big concern to us. I realize what you are saying about it being a post-court order situation that this bill is intended to correct, and reading the bill I do not see any way that they would get the earnings of self-employed people under this legislation. We would like to see them put in under the legislation if there is no way of attaching their income because it is "I'm paying me," as it were. That is why we are suggesting that an invoice be sent out, just as you would be sending an invoice to IBM for Fred. The invoice would be sent, if I was the person, to me to be paid on my behalf.

**Mr Kwinter:** And if the invoice is not honoured, what do you suggest?

**Ms Lalonde:** Doctors have stethoscopes in their offices; you could go in and seize them. You could use the present SCOE enforcement things, which I understand are still being left in effect, but we see this as a pre-SCOE method and that the present SCOE methods would still be used.

**Mr Kwinter:** Actually, this is a post-SCOE as opposed to a pre-SCOE.

**Ms Lalonde:** No. I would go into court and get an order today for support. Tomorrow it would be enforced this way. If this did not work, then you would use the present SCOE. That is what I mean by "pre" and "post."

**Mr Kwinter:** Okay. You list the recommendations. In the second one, you say that there should be a distinction between those who pay their support orders regularly and faithfully and those who have a record of defaulting. What do you mean by that?

**Ms Lalonde:** There are some people from whom, on the first of every month, some women receive a cheque regularly from the minute the court order is issued until the child becomes 18 or leaves school or whatever the termination point is. And there are some people—I was once very closely personally acquainted with one, who when he felt like it he paid and when he did not feel like it he did not pay. I went to court, over a period of I believe it was eight years, 47 times to enforce the support order. That is what I would call someone who has a record of defaulting.

**Mr Kwinter:** I know who pays regularly and who does not, what that means.

**Ms Lalonde:** Yes.

1540

**Mr Kwinter:** What I want to know is, what is the distinction? What are you proposing?

**Ms Lalonde:** Until he defaults, give him the benefit of the doubt.

**Mr Kwinter:** In what way?

**Ms Lalonde:** Call him a payer as opposed to a debtor.

**Mr Kwinter:** Ah, I see, but you are not asking for special treatment, that he be excluded from—

**Ms Lalonde:** No, no. We want the negative connotation of debtor taken off the fellow who is going to walk in the next day and write a series of cheques.

**Mr Kwinter:** I was hoping that maybe you had some mechanism for dealing with that person who pays regularly and is not in default in a different way other than just referring to him in one way as a payer and another one as a debtor.

**Ms Lalonde:** No, we do not, because we support the universal application of support deduction orders.

**Mr Carr:** You mentioned the time frame that you had to spend in going back to the court case, and forgive me for being personal—

**Ms Lalonde:** No, that is fine.

**Mr Carr:** —but what was the reason that you did not receive payment? Was it that he did not want to? It is hard to believe, seeing the beautiful little child beside you there—

**Ms Lalonde:** This is my granddaughter.

**Mr Carr:** Oh, I am sorry. Okay, and I was just wondering if you could let us know—

**Ms Lalonde:** I could not have received payments for her for eight years.

**Mr Carr:** Oh, I am sorry, yes, great thinking on my part. I was taken up by her, though, she is gorgeous. What was the reason in your case, if you could?

**Ms Lalonde:** It was a punitive measure on his part.

**Mr Carr:** So it was not a case of he could not pay or something. He just said no for—

**Ms Lalonde:** Fifty dollars a month out of a \$60,000-a-year income: I do not think there was a financial hardship.

**Mr Carr:** So he just was one of these ones who sort of cut it and went away.

**Ms Lalonde:** Yes.

**Mr Carr:** You mentioned too the situation. One of the problems that we have got is that even with the order being tied to the father's income there are going to be children who are not going to get enough anyway, because of the father does not make enough. The father in most cases does not make enough. You suggested social assistance or making it so that the government would help with that. Let's use the case of somebody who is making payments but can only make \$50 but the court decides the child needs \$100: Has your organization thought how you could make it so that it could be the ability of the father to pay and the state, so that the child can get not what the father can afford to pay, which is what we are at now really from the courts, but what the child needs?

**Ms Lalonde:** Okay. I would assume that that would have been handled under the original support order. What I was referring to is when there is a break in payments as when he leaves the job. Let's say by the time he reports he has left the job, goes to a new job, reports he is at the new

job, they get in touch with the new employer, the new employer has 14 days to provide funds, you are looking at a period where the woman has no money unless he voluntarily keeps up his payments, which is possible and I do not want to sound totally negative towards payers. What we are looking at there is that those support payments would be paid by the province, not that the woman would go on social assistance necessarily.

**Mr Carr:** And your experience, having worked in this area on, as we keep calling it, the front lines, and your personal situation is that they would not. What is your feeling of the reason that sometimes they do not pay? Is it a lot of cases like your former spouse where he did not want to pay because of the problems and anger and so on? Or is it a case of sometimes they cannot pay? Or is it access? What is the range of reasons that are out there, from your experience?

**Ms Lalonde:** It could be any one of a number of things. It could be that in a lot of cases the husband feels that that relationship is over: "I've paid for a couple of years and let's move on." In some cases there is a new family. Either spouse has a new family, and either the husband feels he should not support when there is another male in the house who is supporting, or the husband feels he cannot support it because he has new obligations. Every case I think is unique.

**Mr Carr:** I do not know if you can answer this one, because it seems that we have got two classes of people: people like yourself who did not get enough from the court order and other people who are saying that they got too much. I was just wondering if you had any reason why you got such a low amount, \$50 I think you mentioned. Was there any particular reason? Does it really come down to "having a good lawyer" in negotiations? Why did you not get enough that you really need? I suspect that \$50 did not do it. Have you thought of why you did not get that amount?

**Ms Lalonde:** I am really not sure why I did not, but actually I was quite glad not to get a higher amount, because that way when it was not paid I was not in hardship. If my payments had been \$500 a month I would have been desperate every month; \$50 a month you can live without. So in my case it was good.

**Mr Carr:** Thank you very much for bringing the little one.

**The Chair:** Thank you very much, Ms Lalonde.

BARRY DEMETER

**The Chair:** Mr Demeter. I notice you have been observing the hearings. We have, as you know, approximately 15 minutes. Your submission has been circulated and it is quite readable. So go ahead, sir.

**Mr Demeter:** To enforce and make automatic deductions of child and family support payments from the income of people required to pay support, ie, garnishment, is an action that will be demeaning, denigrating and demoralizing, particularly if the garnishee has recently experienced the crushing emotional and financial drain of the family court system.

If the purpose of the proposed garnishment is to humiliate the individual and promulgate an intense atmosphere of hostility, then proceed with the amendment to Bill 17.

Since June 1987 I have not missed one single court-ordered child support payment, yet according to SCOE I am one—and I apologize for this figure—of the 84% who is in default, such that they requested the court to enforce a garnishment on my salary.

How is this possible?

I made a \$52,000 lump-sum cash matrimonial estate settlement. Then I paid \$56,000 in legal and court fees to have all outstanding support and access matters resolved. Yet one month after the divorce trial, SCOE was enforcing its apparent mandate.

Phoning is impossible. They refused to answer my letters. A trip at my expense to London saw the area director, Jack Holmes, scream at me from behind bulletproof glass that he did not have to accept any damned documentation from me at all, no matter what it was, because I was not his client and he did not work for me.

A trip at my own expense to Toronto saw the executive director of SCOE, Gail Taylor, apologize for Mr Holmes, fax him the documents and then admit to me that even the Attorney General himself could not stop a garnishment. I would have to go to court.

It will take over 50 years in this province to erase the stigma of being a father forced to pay child support through garnishment.

Despite the fact that I correctly filed all the required appeal documents, SCOE went ahead and ordered my employer to begin deducting 58.8% of my net salary from each paycheque. I was hauled out of my classroom by the director of education and my principal and informed of the garnishment.

I spent an additional \$2,500 in legal fees so that the judge could halt the garnishment. The employer refused to accept the judge's order because SCOE told it not to act until SCOE approved any changes.

More pay was deducted. Again back to court and the judge was extremely annoyed because, in addition to ignoring his order, SCOE was refusing to release any of the moneys to my ex-wife. More court orders, more expense.

1550

Phone calls to the board office, a trip to present the new court order, return trip to pick up refund cheque, cheque was stale-dated back to June 1990, bank would not cash it, phone call to explain to board office, trip to present old cheque, return trip to pick up new cheque, return trip to bank.

The judge does not have the authority to rule on arrears, so now that has to be decided in a higher court. However, at SCOE's request the judge leaves the monthly current support payments under garnishment. There is no allowance at the board office for the third pay of the month, thus already it has deducted too much money. Another phone call, trip to the board office. I have included the cheques that have shown the overpayment and the refunds that I had to go and collect myself.

Now, why not simply let me write out 12 post-dated cheques a year and give them to my ex-wife? Months



before there was any sort of court order I voluntarily and regularly made larger support payments than the first order actually called for. Because this procedure did not involve 40 bureaucrats, SCOE and Revenue Canada refused to give me any credit for these payments. It is no wonder you have a system that is overloaded, bogged down and virtually ineffective.

And the reason for my alleged arrears?

The court order covered four children. It specified that the two eldest had to be in school full-time. Robert, who graduated with a 78% average in his OACs and who was accepted in business at Wilfrid Laurier University, decided that he wanted to come back for grade 14 so he could play basketball and be with his girlfriend.

He took two trips to Florida and one to Arizona. His attendance record, which I have included for you to see, shows he was absent a total of 126 days truant, 44 days excused absence and two days late. That is a total of 172 missed classes. Since the school year is only 186 days long, you really have to question his commitment to full-time attendance. Actually, he was working full-time at A&P.

Each semester he would sign up for three courses, the full-time minimum requirement, and his mother would inform SCOE that he was in school full-time. The records will show on the second semester on 1 February he signed up for physics, dropped it 1 February later in the day; 1 February law 04, dropped it 5 February; and 1 February law 03, dropped that one 10 April. In the first semester on 7 September he signed up for biology and he dropped that 13 September.

I kept asking SCOE to verify his attendance with the school and Mr Holmes refused, saying all he had to do was receive verbal verification from the boy's mother. So finally I quit paying for his year off when he turned 19. Thus I was in arrears. Included there is his attendance record and all the little notations that are there are the days that he was absent. All the reasons are listed down below and you will see that he included every one.

At every level then, in the courts, SCOE—particularly SCOE—and the employer, the system of enforced payments has a well-documented record of abject failure.

If the purpose of this system is to punish the male parent who is trying to support children who no longer are his, then it is doing exactly what it was programmed for. Why contribute even more misery to this dismal operation by conscripting those volunteers who still independently make all their payments?

My system would see a 33% drop in the number of arrears cases in the first year alone, guaranteed.

In part A, you have some options. This whole thing, psychologically, is primarily a matter of control. People will agreeably do many things that you want them to if they think they are in charge of the decision.

Thus, following the court order, you arrange for choice. A typical letter:

"Dear Sir:

"You have assumed the responsibility of child and/or spousal support in the amount of \$ a month.

"Please be kind enough to select the payment option that best suits your life situation:

"1. You will sign an authorization instructing your employer to deduct \$ monthly directly from your pay. This will be forwarded to SCOE and then paid to your ex-wife for the benefit of your children;

"Or, if you choose,

"2. You will pay SCOE, directly by cheque each month, \$ made out to the director, SCOE. This in turn will be deposited in your ex-wife's account, again for the benefit of your children;

"Or, if you choose,

"3. You will mail or deliver directly 12 post-dated cheques, dated on the 23rd of each month in the amount of \$ and payable to your ex-wife.

Since option 3 entails considerably less expense to the tax system, it will contain the following monetary incentives, and here is the reward in the program:

One year continuous record of support payments, in accordance with the court order, will see a one-week reduction in the amount of support while the child or children are spending their summer access with you.

Two years' continuous support will see a two-week reduction when they are with you.

Three years' continuous support and you will have the full month that the children are with you reduced.

Four years' continuous record of support payments, in accordance with the court order, will see an additional sum of up to \$200 per child deducted from your December cheques, provided said amounts are supported with dated receipts indicating up to \$200 per child was for their personal Christmas gifts from you.

Five years' continuous record of support payments in accordance with the court order will see you automatically eligible for a court hearing, at which time you may ask for one additional day of midweek access, including overnight, for the purpose of assisting your child/children with their school work or one additional week of summer access.

Now if the gentleman has maintained his access visits faithfully for five full years and has made all his support payments during this time, odds are the situation will be considerably less volatile and the children will all be five years older than when the marriage breakup occurred.

A continuous record of support payments past year five will see a continuation of any and all incentives previously earned. In the unlikely event that the person does default on a payment for a period of over 60 days, he will immediately revert to year zero of the incentive program and he can begin his credits again on a yearly basis.

Will the making of child and/or spousal support payments in the province of Ontario continue to be retributive or can we be enlightened enough in the province to enact legislative change that will allow the system to become one that is indeed remunerative?

If the purpose of the amendment to Bill 17 is for the continued harassment of the absentee parent, go for the automatic garnishment. You will accelerate the cumbrousness of the system 10-fold. If the purpose of the amendment to Bill 17 is truly designed for the efficacious and

continuous delivery of mandated support payments for the benefit of the children, then it is time to calm the waters and allow the payer to maintain some dignity and self-respect, as well as the feeling that he is actually voluntarily contributing to the support of his children and I do wish you good luck in your deliberations.

**The Chair:** Thank you, Mr Demeter. You have quite an elaborate and well-worked-out scheme and some of the issues you pick up are some that we have heard before. We have a bit of a problem in terms of time, still, and I think probably many of the committee members would probably like to ask more than one question, but unfortunately we are time-limited. We will probably go over slightly—starting with Mr Elston.

**Mr Elston:** The issue around which you have spoken to us is a good one. There is no flexibility in this program and you have pointed that out quite clearly. I think the presentation earlier by a gentleman about how he felt there was a wedge being driven between him and his children by the intervention of SCOE and an already well-working voluntary situation is something that we really have to be careful of.

Having said that about your first part, the second part, which deals with the options, for me revolves around a problem that we have here in this committee. Our bill does not speak at all to the issue of access, nor do we tie any of the principles of the bill to the access portion. Your option provided here actually does something that the bill is not designed to accomplish.

The other issue is this, how many people do you think would be able to participate in your program? It looks like it is sort of an unusual scheme, but do you see it being applied to everybody, no matter what level of pay is recorded in the order?

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**Mr Demeter:** As a matter of fact, I believe that people work more for rewards than they do for working for a punishment type of system. You are the experts and your committee advisers are more experts than I am, certainly, but I am trying to present to you, instead of just coming in and saying, "Negative, negative, negative, it is wrong, wrong," some feelings that perhaps you can work on.

I recognize the fact that this is not really the forum to give you the complete package, but I am overwhelmed by the fact that this openness is existing in front of this committee today. I am exceedingly impressed. So perhaps I exceeded my mandate a little and threw in a little more than I was supposed to—

**Mr Elston:** That does not bother us too much.

**Mr Demeter:** In terms of its being open to everybody, I believe anybody would work better under a system that rewarded them for faithfulness and devotion to duty or whatever. I strongly question the 75% figure because SCOE is making arrears where none exist and if they are giving you those statistics, they are false. Most of us would pay support. I paid voluntarily long before I was ever hauled into court and told, "You will now pay to SCOE." It was not necessary. It would not be necessary today; it will not be necessary six months from now. I will

pay and look after my children because they still are my children, contrary to access arrangements and everything else that they tell me I have to live with.

Most men in this situation would feel that way. You give them the feeling that they have some say or some control and in effect, when you hand them the document and say, "We're giving you three ways to pay," what you are saying is, "You're going to pay anyway, regardless." They are going to feel that they have some control over it and you will get a lot more agreeableness, participation, regular payments made.

**Mr Elston:** I presume that you would also be an advocate for some flexibility being worked into the system, as opposed to saying once the order is made, that is it, and then you have to go back to the courts?

**Mr Demeter:** Oh, absolutely. That is a nightmare.

**Mr Elston:** Your expenses now, I guess, fighting the issues around support and custody, are now about \$59,000 generally. I think you had \$56,000 plus another \$2,500. Would you be one of those people who would be unwilling to resort again to the courts if a variation order were required for support payments?

**Mr Demeter:** I shudder at the prospect of going back to the court and I am involved right now on this university issue. I have to go back. It is just automatically, oh, well, \$2,500, \$5,000, \$6,000, \$7,000, \$8,000—just like this. I am broke now financially and at my age, I am trying to regroup and re-establish my life. I have, unfortunately, an ex-spouse who interrupts my access calls and says to me, "I love what the courts do for a woman." I say to her, "If we would stay out of the courts, there would be more money for everybody." Her response is, "I'll take you to court twice a year if I feel like it because SCOE pays for me and you have to pay." That is what I am dealing with.

**Mr Elston:** You have outlined a bit of a problem with SCOE as well, and perhaps one of the other questioners will get into it, but I was quite disturbed by your face-to-face confrontation with the SCOE office and I know that the new director probably will take that example to heart when other issues are started. It is your sense that there need to be a lot more resources involved in the SCOE operation, as well, I would take it.

**Mr Demeter:** They have to have some flexibility to at least make you feel they are hearing you. Now they may ultimately, when they get rid of me, send me the letter anyway when I am away from whatever the big threat is supposed to be. I am not a violent person but I strongly resent not even being able or allowed to sit down like I can with you people and present my information to an individual. This was like something out of a prison movie, the big door with the combination on it that locks and everybody is on the other side and I stand there and discuss my business openly with all the other men and women who are out in that lobby. That is ridiculous. Their executive director said that Jack Holmes was supposed to work for me also, but I still have to go to court now, because he has laid in the garnishment on this business and nobody can stop it. SCOE, nobody, can make it go away and even



the lower-court judge cannot stop it. I now have to go up to another level. It is going to cost me a fortune.

**Mr Elston:** I will not ask another question, but I do want to bring to the attention of the Attorney General's representatives that there are two questions that come out of this brief. One is a 58.5% net pay deduction and the other is, to whom is the status of client owed by the SCOE people, and perhaps we can look at that later.

**Mr Carr:** We have heard a lot of talk about the 75% figure which I think we almost can throw out now, because it appears to be completely, for want of a better word, ridiculous. Why do you presume, then, people in SCOE are using that figure? Do you have any feeling of why they are throwing that figure out?

**Mr Demeter:** I guess from what I see, they are under a tremendous amount of pressure and like anybody who is pressured, any type of employee, they want to indicate that it is because of this fantastic workload. Therefore, they are creating make-work. They are harassing men who do not need harassment. They are hauling into court individuals who would very agreeably like to make some kind of a settlement.

I think it is because there is no control at the top. Obviously, when Gail Taylor can say that this man is wrong, but I cannot stop or overturn what he has done, there is nobody really controlling them now. You have got an organization that is out of control right now, and what you had better do is put the clamps on it because it is making hostility where none need exist. The whole divorce, psychological assessment, losing-your-child procedure is harsh enough without having this come right after it. So I agree with you. The 75% figure; I would strongly question its validity. And I heard earlier today that they do not even keep statistics. That is ridiculous.

**Mr Carr:** With the amount that you paid in the legal fees, which is such a tremendous amount there, the \$56,000-plus, etc, why would it have been? Was it abnormally tough circumstances? As part of that question, I was just wondering, with the very elaborate way that it was used, for example, about the child in school and so on—and I do not want to presume something when it is not there—but is this maybe part of—through your former wife's lawyer? Is this something where it was designed as a part of that, or how did this come about? You might not be able to answer that.

**Mr Demeter:** That is a very all-encompassing question that covers three and a half years of battling in and out of the courts. My feeling from day one was that I was always willing to negotiate, but I would wake up in the morning and find the bailiff there with a new summons to drag me into court again. I believe it was a combination of my ex-wife's lawyer and her own particular individual personality. For some reason, I guess, I deserve to be punished right now for whatever I did in 20 years of marriage, but she insists that she will see me in court on a regular and constant basis, no matter what I try and do to avoid it.

The legal fees are onerous. You cannot walk into their office now without laying down \$750 or \$1,000 right off the bat, and then each repeat visit, or whatever—okay, that

costs a lot. Second, the court has a little trick that is called "settlement." We negotiated all our property six months before the actual trial. A settlement was made. All the furniture disappeared because she and her boyfriend broke into the house and took it when I went to my brother's wedding. That was all gone too, so it was settled. Now there was nothing left to be settled. Everything was equalized, pensions and everything.

My lawyer told me on day one, "If you give an additional \$5,000 and give up your claim for custody," which was very dear to me, "you are done." By day two it had grown to \$10,000. By day three it was \$16,000. By day four it was in the \$20,000s and at the fifth day of the trial I had not had a single witness speak on behalf of me. Her lawyer was filibustering. They brought in everybody.

**Mr Carr:** So lawyers are actually using access as bargaining tools?

**Mr Demeter:** Absolutely. It was \$26,000 at the end of five days and finally I caved in. Nobody had heard me. My lawyer kept saying, "Okay, if you come back next week it is going to cost you \$35,000 to \$40,000 to be heard. All I wanted was a chance to speak on my behalf to have custody of my children and I could not. I have the trial transcripts, by the way.

**Mr Carr:** All right. So all I can say is I appreciate you coming in and, again, through very difficult circumstances. I think you have presented a very thought-provoking discussion. Thank you.

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**Mr Fletcher:** Thank you, Mr Demeter. You are not the first person I have heard this from today and it is amazing how long SCOE has been going on and it has just been one of those bureaucratic messes and something that we inherited as a government and we are trying to fix. You are not the first person who has appeared here today saying that SCOE needs some adjustments and we feel that Bill 17 is part of that step in making some of the adjustments. It may not be the right first step, as far as you are concerned, but I think as the government does continue to readdress and take a look at the legislation, that some of the changes may become beneficial to what you are saying. As I say, Bill 17 is a first step and you are not a forgotten partner in this, by any means.

**The Chair:** Thank you, Mr Demeter.

**Mr Demeter:** Thank you very much.

#### HUMAN EQUALITY ACTION AND RESOURCE TEAM INC

**The Chair:** Perhaps we could hear from our next witness, Mr Norman Rosenitsch who is representing the Human Equality Action and Resource Team.

**Mr Rosenitsch:** Thank you very much, Mr Chairman. Just a few pre-comments that I have been asked to make—

**The Chair:** I am sorry, Mr Rosenitsch. Just for clarification, you have half an hour, as you represent a group.

**Mr Rosenitsch:** I understand that. I have just a few pre-comments to make. One is to be directed at Irene Mathysen and it is from one of our members of HEART

sitting in the audience here today. Her very heartfelt sympathies go forth to Andy Axhorn, because she has been denied access to her child since 30 July 1990. It does exist.

Second, a comment about the previous gentleman: we have a member of our organization who was forced by economic reasons to sign away seeing his child until the child is 18, because the alternative was financially devastating.

My name is Professor Norman Rosenitsch. I am a professor of computer studies at Centennial College and Ryerson Polytechnical Institute. I am treasurer of OPSEU Local 558. I am a delegate to the Labour Council of Metropolitan Toronto. I have been a delegate to the Ontario Federation of Labour and to the Canadian Labour Congress. I am the co-chairman of the health and safety committee at my college. Outside, I am a director, central east, of the Canadian Amateur Diving Association, Inc. That is springboard diving. My entire adult life I have been involved with young people and worked in the community in community affairs. I am on the board of HEART.

What is the Human Equality Action and Resource Team? The Human Equality Action and Resource Team, also known as HEART, is a non-profit, self-help organization composed of women and men who are dedicated to helping families who are involved in the separating and divorce process. We strongly advocate a non-adversarial approach to separation and divorce and alternative dispute resolution procedures.

Our main focus is on the children involved in the process and we affirm such concepts as family mediation, shared parenting arrangements and fair child support. We are dedicated to human equality between genders, as well as races and creeds. Our experience is with the application of equality in family law matters relating to separation and divorce.

HEART's concerns with Bill 17:

Concern number 1, and it is a lengthy one: Our first concern is with the mandatory, universal application of the proposed support deduction order. It is argued by government members who propose this bill that it will increase the collection and reduce default, as well as removing the social stigma that was attached to garnishment. I understand that \$5.4 million will be budgeted to manage the proposed program. And I have that from a letter from Drummond White, not to me.

First, we are concerned about the universal application of the support deduction order. Telling the citizens of Ontario that the support deduction order is not a garnishment, because all supporting ex-spouses are included, is almost bizarre, as bizarre as Saddam Hussein telling the United Nations that the occupation of Kuwait is not an invasion but merely the incorporation of an Iraqi province.

A garnishment is a garnishment no matter what rhetoric the government chooses to use. Garnishment has its place in our society. It is used when a willingness to pay debts is absent. In the course of natural justice a support-paying spouse should not be subjected to the humiliation and psychological effects of garnishment unless his unwillingness to comply with the support order is proven. Every support-paying ex-spouse is judged to be a potential dead-beat by this proposal. Under the rights and freedoms

of our country they should be deemed innocent until circumstances prove them to be guilty. Only at that stage should garnishment provisions be invoked.

A question: How many support-paying ex-spouses are there in this province? The government has announced figures regarding the number of defaulters enrolled in the current program, and today I have heard it might not even be that valid. I would expect that defaulters are recorded with your ministry, but how many people pay their support on a frequent basis? I am certain there is a majority of support-paying ex-spouses in this province. But will the government come up with accurate figures so the true ratio of payer to defaulter can be published? After all, good government management would surely indicate these figures in a feasibility study.

I have concluded there is a phenomenal number of individuals in this province who pay support as opposed to those who do not. I am sure there are a few support payers on your committee; if not, at least in the Legislature. Is the government proposing a bill to build a big bureaucratic bill-collection agency with the \$5.4 million? Why not use that money to concentrate on the true violators of support orders instead of some massive computer system to collect bills that need not be collected at all? Do the taxpayers of this province have to pay for a service that is not even needed in the first place to collect from the people who are paying?

You have to realize that garnishment affects those who are gainfully employed, ie, the sitting ducks. What about those who go underground, those who become transients, those who leave the jurisdiction of Ontario? How effective is mandatory garnishment in these cases? What I am suggesting is that mandatory garnishment is not going to help solve the defaulter problem. Who is included in these defaulter totals—those you can never collect from in the first place? We have a member of HEART whose ex-spouse has served time in a federal penitentiary. That person laughs at the fact that they might throw him in jail. The Don Jail is nothing compared to the federal penitentiary. Are they those who cannot afford to pay all of the ordered amount but who are paying some percentage; those who are trying to make ends meet; those who are on welfare? Produce some statistics on the nature of the problem, and the need for mandatory garnishment will be minimized, and then the focus on how to use the financial resources will become clearer. I challenge the supporters of mandatory garnishment to publicly issue a feasibility study, a cost-benefit analysis, a sociological and psychological study on this issue. I challenge that.

Third, one must look at the effects of mandatory garnishment on the children of the parties involved. HEART advocates that both parents should be involved in the upbringing of children. Both parents should be part of the child's life. Of course, there may be extreme circumstances where one or both parents should be excluded. In the first few years of separation or divorce there exists a general feeling of anger, hostility, hurt and revenge. We have heard some of those cases today. Children are usually aware of these emotions between parents. The support-paying ex-spouse is usually the non-custodial parent.



Some custodial parents make sure the children know who the power source is. Most children respect the custodial parent because of the nature of the power source. The support-paying non-custodial parent has the respect of the children in that the child becomes aware of the financial contribution of the parent who may have some or little or no access to that child. I have personally spoken to adults who were children of broken homes and their praise for the non-custodial support-paying parent was considerable.

If the government of Ontario were perceived by the child to be the source of money for the child what damage is being incurred to the relationship between the support payer and the child? Is this bill going to put more barriers between the children and the parents? I heard earlier "drive another wedge in." Also, what about the schoolyard taunts among children that are so vicious at times? Have we considered this?

1620

Fourth, the option for two ex-spouses to opt out of the support deduction order is unrealistic. A support-receiving ex-spouse would never have to give up the guarantee of the province of Ontario to collect the bills. No lawyer would advise his client to give up that right. Would this option be another bargaining chip for one spouse to use against another to extract custody or access or to get more of the divided assets, as we heard earlier, or a lifting of the moving-from-Ontario clause that is in the current legislation, or changing of children's names? Is it another bargaining chip for one side? I ask you the question.

Fifth, the implications of spousal violence must be addressed. Separation and divorce have very emotional effects on both parties. For the support-paying ex-spouses, we usually see them faced with limited access to their children, without possession of the matrimonial home, and faced with a loss of friends and family support and with an order to pay support where the amount was determined with very little economic or sociological input. We have situations where there are some very frustrated, hurting and despairing people, especially during the first years. Add one more brick to the heavy emotional load and what will happen? Most people are not violent. Violence evolves from frustration. If this bill is the root cause for one more person to commit suicide, murder or assault, this law would be a bad law. Use the money to help ex-spouses resolve their differences. Do not help the cards be stacked. Use the law in a positive way to relieve this stress.

HEART's proposals: Garnishee only where a person is proven to be in default; set up a garnishment hearing before ordering the garnishment, so both sides of the issue can be heard; order mandatory mediation with an adverse inference provision for non-participation prior to the support order being issued; the mediators should have financial and social science expertise, and have compulsory disclosure of the mediation proceedings to the family law court in the event a settlement is not achieved.

Our second concern is that the proposal does not deal with overpayment. Who is liable to return money that was paid in excess of that which is required? There are circumstances that could arise where more money was deducted than should be. This could be caused by variation, suspension or cessation orders or even due to payroll differences

when changing employers. Who is liable to repay? How can repayment be enforced? There is no language.

Also, what safeguard is there that will prevent double deductions? This could occur if deductions were required from two or more income sources. Again, who is liable for the repayment and how can it be enforced?

Last, who is liable to repay money that was deducted when parties do not agree that the order has reached termination? The court process could take months, if not years. If the termination were upheld, who is liable to repay, or will the innocent payer get stuck? What about the interest on improper deductions? HEART's proposal: Add some repayment or overpayment language.

Concern 3: Our concern is that parties cannot opt out of the program. After many years, support needs vary. The increase in support is addressed in the current legislation: you get your cost of living. As children pass from their early years to their late teens and early twenties they become more responsible for their own support. Concurrently, divorced parents are usually on better speaking terms.

After many years, many support orders are phased out by both parties without referring to the court. They do not need the aggravation; they do not need to waste their time; they do not need to waste their money. With this bill the two parties cannot agree to scale down or phase out the deduction order by themselves. They are forced to go to court to obtain orders. Is this merely a job-security clause put into Bill 17 by the legal community? I ask you. Surely two consenting parties should be able to handle their own affairs without legal counsel and the court. Bill 17 proposes that the deduction goes on regardless of what the two parties wish. HEART's proposal: Allow consenting parties to opt out.

Our fourth concern deals with the potential abusing of the garnishment facility by a recipient of the support. A custodial parent could establish a mailing address in the province of Ontario with the collaboration of friends and family. Then the custodial parents and children could move to some other jurisdiction or foreign country such as Jamaica, Bangladesh, Guyana, etc. How much time will elapse before the court deals with the change in circumstances? How long will it take for the court to enforce the Hague Convention? How long will it take for extradition to occur? In the meantime, the garnishment continues with the guarantee and support of the government.

Another abuse could occur when children are placed in the care of grandparents or other people by the custodial parent. The grandparents or the other people have means to support the child in their care and the custodial parent uses the garnishment for their own use. The grandparents or the other people could reside in Italy, Trinidad, New Zealand, Hong Kong or wherever. In this case the purpose of the support order is not being adhered to, but the government garnishment continues with the guarantee and support of the government. HEART's proposal: Plug this potential abuse by enforcing garnishments only where the child is under the care of the creditor and as long as they remain in the geographical area defined in the court order.

Concern 5 is more global in nature. Our last concern deals with the government's approach to family law issues. This prioritization of money issues above the social issues of children's needs and alternate dispute resolution is appalling. Many, if not most, of the money issues would disappear if the government's concern for the people involved in marital disputes were addressed. Family law wars continue because the government does not have an effective dispute resolution process. The current adversarial system economically devastates both parties financially and rewards lawyers financially. The children who are party to the dispute lose out emotionally and financially.

HEART's proposals:

1. Every child has a right to have both parents participate in its life after separation and divorce. If the two parents cannot agree on a mechanism, the court should order mandatory mediation. What parent would not wish to have a situation that is in the best interests of the child? An adverse inference should be inferred by a judge if one parent does not participate or frustrates the mediation process. The judge shall have full disclosure of the mediation proceedings in the event a settlement is not achieved.

2. Every child has a right to receive financial support while on its road to self-sufficiency. Children have a duty to phase in self-sufficiency as they approach adulthood. I know I did. I am sure many of you have. What parent would not wish their child to have the necessities of life in order to achieve self-sufficiency? If two parties cannot agree on what is fair child support the court should order mandatory mediation, again with an adverse inference provision and a full disclosure provision.

3. Support-paying parents should be allowed to exercise their duty to pay support with dignity and receive true respect from their children. Their rights should not be curtailed because of those who do not exercise their duty. Only those who are proven to be in violation of an order should be subject to the enforcement provisions.

4. Use the \$5.4 million to relieve hardship by providing housing, day care, counselling and mediation services. Do not use it to collect from people who pay it anyway. If the government has trouble collecting from defaulters perhaps it should let the private-sector bill collectors handle it. If SCOE is not effective, maybe somebody else can be.

Concluding remarks: The government should be providing legislation to foster positive approaches to marital breakup and should not be engaged in negative punitive legislation. Bill 17 has its share of negative and punitive actions. It is time the government addressed the child and family law issues with a global view and not in the piecemeal fashion of Bill 17.

By the way, I have in my hand the 18 August 1990 NDP Agenda for People. There is no mention of the \$5.4 million in this program. Is the government adopting the Mulroney government's morals by getting elected on one agenda and bringing in a secret agenda based on secret promises to special-interest groups?

Last, what legislation is planned for children who are denied access to the non-custodial parent by the custodial parent? Does this government value bill-collecting more than the psychological needs of children who are fla-

grantly denied access to their parents? Is this really a government that wishes to address the needs of people? I ask you that question.

1630

**Mr Elston:** Or is it the needs of power?

**The Chair:** Perhaps we could save the commentary for when the provincial House resumes on the 18th.

There are a couple of things. I believe you named at the outset of your presentation that some acquaintance had received a letter from myself.

**Mr Rosenitsch:** Yes.

**The Chair:** I do not recall sending any letters out that specifically mentioned garnishment. I would appreciate receiving that so I could verify that, please.

**Mr Rosenitsch:** That is where I got the 5.4 from.

**The Chair:** Five point four—I do not think I made any reference to 5.4 unless we were talking about rent controls. Is that a rent control issue?

**Mr Rosenitsch:** It says here, "Sincerely yours, Drummond White, standing committee on administration of justice." "Thank you for your letter expressing your views on Bill 17," etc. "While the same structure and organization will remain, the new child and family support program is different in that it will have stronger enforcement measures and additional resources—\$5.4 million to manage the program."

**The Chair:** I do not recall—

**Mr Rosenitsch:** And I believe this is your signature.

**Mrs Mathysen:** Drummond, I believe that this has a lot to do with the fact that in the past the argument has been that governments bring in legislation or programs and then fail to fund them so that they will work. The reason for providing the information was to illustrate that if this government is going to try to bring in legislation that will help women support their children then we are willing to finance that adequately so that it can work.

**The Chair:** I just do not recall having sent out detailed letters like that. I appreciate—

**Mr Rosenitsch:** It is your signature. I am sorry, sir.

**The Chair:** It could well be. Could you circulate it for me? Could I see it?

**Mr Rosenitsch:** Well, there is some other correspondence and I would wish to keep the name of the person this letter was addressed to confidential. Can we black it out? This is one page and we will black it out and give them the right to privacy. Thank you.

**Mr Elston:** Mr White has been found out.

**The Chair:** I am finding myself out. I do not recall that note.

**Mr Mills:** Will the real Drummond White stand up, please?

**The Chair:** I would be pleased to.

**Mr Elston:** Mr White, I wonder if we could ask Susan, who is our legislative assistant, to perhaps do a bit of a study and find out whether or not the NDP has given up on the Agenda for People—



**Mr Rosenitsch:** Excuse me, Mr Chairman, I believe the purpose of the hearing is for people to ask me questions.

**The Chair:** Yes, it certainly is, sir—a very appropriate point. I wonder, however—the recorder is having some difficulty in terms of volume—if you and the rest of us could tone ourselves down.

**Mrs Cunningham:** I apologize for missing so much of the afternoon proceedings. We are trying to cover a couple of committees. There are not very many of us Tories left, sir, even with your remarks—

**Mr Elston:** Too many.

**Mrs Cunningham:** I do not believe you believe that, sir, and neither do I believe that Mr—who said that? Not Mr Elston.

**Mr Elston:** Yes, I do believe it.

**Mrs Cunningham:** However, given that we have not met each other before, except earlier today, I think we certainly share the same views on this piece of legislation and I would like to ask you a specific question. First of all, what is your experience with mediation? Why do you take such a strong stand on mediation? I am interested in—

**Mr Rosenitsch:** In HEART one of our mandates is to try to get away from the adversarial system of dispute resolution, so one effective tool is to have people sit down and mediate. I am involved in the labour movement and that is a very good method of achieving some kind of settlement and it usually works through without going to the extreme to go to arbitration or the court to decide. So usually it is best for both parties to work out their difference where they have some control rather than a third party imposing it. Unfortunately, the mediation process is stacked right now because if you look at the legislation and the attitudes of our society, at mediation all you have to do is pretend to be doing a good job and you will get out of it without a settlement. And it will probably not be disclosed mediation, just the fact that you went. That is all.

But if it were mandatory mediation with full disclosure, no-one is going to try to bilk the situation, because bilking is just going to push you on further to more adversarial court costs. So if two parties can sit down with some realistic expectations to solve the problem and the federal legislation says in the best interests of the child, what could not be in the best interests of the child but to work out some settlement?

**Mrs Cunningham:** Could you tell me, then, what specifically we will have to do to support this mandatory mediation, in your view?

**Mr Rosenitsch:** My lawyer said to me when I went through the process, “You know, people who are interested in separating or divorcing should be forced to stay away from the lawyers for one year.” I do not know how practical that is.

**Mrs Cunningham:** The children would certainly benefit.

**Mr Rosenitsch:** Certainly. Sure. The worst miscarriage of justice occurs in the masters’ courts, in the initial separating process. Now they throw one person out of the house, not even thinking about the fact that perhaps there is something where there can be joint parenting. Maybe you stay in the house six months; the other person stays in

the house six months. That is going to encourage people to get this thing settled, but if you give one person the house with the children for some undisclosed date, you are going to have two, three years of conflict. If we make things equal, children can stay in their own neighbourhood. Just have the different parents move in and out. There are all kinds of ways. Mediate the—

**Mrs Cunningham:** So how do you think we can do that?

**Mr Rosenitsch:** By some legislation. We are getting off Bill 17 but—

**Mrs Cunningham:** No, we are not because I think 17 is a small part of a solution to a much bigger problem.

**Mr Rosenitsch:** You are right. The global issue should be addressed—

**Mrs Cunningham:** You said yourself it is piecemeal-ing it. I agree with you and I think we are dealing with the wrong piece today. But let’s hear what you would do.

**Mr Rosenitsch:** I would have to go back and look at Dr Jim Henderson’s proposal of presumed joint custody first of all, right at the master’s level. Then there will be mechanisms to fall into place that would really show you where the children are going or how the situation should evolve from the interim period to the final period, which usually takes two or three years.

Now, there is some problem, but one way to defeat that is what we hear in HEART, and we hear it from both sides, men and women—the allegations. Things like, “That woman cannot take care of those children,” and, “That man. I’m afraid of him.” Therefore, we should not have the children exposed to this potential abuse. Where there is proven abuse, assault, abuse and so on, I can see separating the people. But you know what is interesting? One spouse could throw a dish at another spouse and get charged with assault. Never gets convicted but will be charged and maybe lose custody of your children, or just interim custody. Or another spouse may slap another spouse’s face. They are not violent people. They do not have a history of violence. But they use it. They use it in the courts. The lawyers use it in the courts to divide people; as they say, “I’m looking after my client’s interests.” They are not interested in their client’s interests, I do not think. They are not interested in the children, anyway.

**Mrs Cunningham:** Would you mind, on concern 3 where you make the statement at the bottom where you are talking about consenting parties to opt out?

**Mr Rosenitsch:** Yes. It is my understanding—

**Mrs Cunningham:** I was wondering if we could have a clarification on that point by the staff.

**Mr Rosenitsch:** Okay. It is one of the articles in here.

**Mrs Cunningham:** I agree. Would you get the article, the number that you see, while they are giving the response here? I think it is section 3k as well.

Could we please, Mr Chairman, on this one because this is one that I am not clear on, either, get a view from the staff while we have them? This is on the opting out. The statement is made at the bottom of page 3. We are both wondering if that is correct. Yes, “With this bill”—it

is one that you and I are both interested in—"the two parties cannot agree to scale down or phase out the deduction order by themselves." Now, if someone wants to change the deduction order by themselves, what would we have to do to this bill, or is this a true statement? I think it is very important that we hear—

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**Mr Rosenitsch:** I see your point.

**Mrs Cunningham:** If I ask someone to tell me how to make that happen with this bill through an amendment or something, I would like specifically to know now.

**Ms S. Murdock:** Section 3f.

**Mrs Cunningham:** Section 3f, right. I know why you said 3k. It is on my mind too.

**Mr Rosenitsch:** Section 3f, which says "no opting out" in the comments on the side.

**Mrs Cunningham:** I am just wondering if there was a solution on this one. If the people listening had thought about this at all, because it is not the first time we have heard it, the opting out. What would we have to do, just strike the clause or—it must be there for a reason. It is 3f, sir.

**Mr Rosenitsch:** It is 3f, yes.

**Ms Pilcow:** An agreement to alter or to vary a support deduction order is not valid in and of itself. What has to happen is that the underlying support order has to be changed by the court. The philosophy is that a support deduction order follows the support order, and if the support order is itself appropriate then the support deduction order is then appropriate as well. If you want to change the amount, you have to go back to the court that made the support order and change it.

**Mr Rosenitsch:** My point is that parties phase out support over time without going to the courts, but how do you change the support deduction order for those whom you garnishee from, of course?

**Mrs Cunningham:** Correct me if I am wrong, because I would like to be right. Presently, if people have a support order where there is no garnishment, there has been regular payment, and they choose to change it, if the director of SCOE knows that they themselves want to change it, my understanding is that you have to get it changed through the courts, even now. Is that not right?

**Ms Pilcow:** No.

**Mrs Cunningham:** So the information we had from the witness yesterday was not correct. That was the one where we saw the cheques attached and he paid \$215 and they, in fact, only passed on \$200. No one told me it was not correct.

**Ms Pilcow:** I am not sure what you are referring to. Parties are free to amend a court order for support by way of agreement, and that agreement is binding. So you can change the underlying support order by agreement, and if you file that agreement with SCOE, SCOE will enforce that new amount.

**Mrs Cunningham:** Okay, so this is the case where someone did not, in fact, go and have the support order changed.

**Ms Pilcow:** Either they did not get the support order changed or they did not enter into a further agreement with their spouse. They do not have to go back to court for the support order. They can agree between themselves, draft up an order, and that will vary the original court order for support.

I think what you are referring to is a situation where people agreed informally to change the support order. You cannot do that and have it enforced by SCOE.

**Mrs Cunningham:** I have been given two pieces of advice and if I am going to be amending something I need—I am sorry we are taking up your time—

**Mr Rosenitsch:** That is okay.

**Mrs Cunningham:** —but on the other hand, Mr Chairman, I have been obviously misleading people based on the information we got yesterday, or the information that I incorrectly interpreted, which is probably more likely, but I do not think that is healthy either.

**Mr Elston:** Oh, that is not likely.

**Mrs Cunningham:** Oh, I think it could be. Given what is going on I think it well could be. Here I am with all the paid advice I can get and I am having trouble with this legislation. I do not know how ordinary, everyday people could even know what their rights are.

Now, having said that: If someone has a separation agreement and it says that you pay \$400 a month and that has been registered with SCOE today—forget this legislation—and, in fact, you want to change it, you can change that separation agreement by both of you going to the SCOE office and saying, "We want to change this," is that correct?

**Ms Pilcow:** No, no, you cannot do that.

**Mrs Cunningham:** Okay, tell me how you can do it then without paying anybody a penny.

**Ms Pilcow:** The two of you, the two parties in a separation agreement, can get together and enter into a new agreement to amend the previous one.

**Mrs Cunningham:** How do you do that without going to a lawyer?

**Ms Pilcow:** You can do it without going to a lawyer. A domestic contract needs only to be signed and witnessed and dated.

**Mrs Cunningham:** At SCOE perhaps?

**Ms Pilcow:** No, SCOE does not act as a legal representative.

**Mrs Cunningham:** All right.

**Mr Elston:** You could go to the people who suggested—the people from the community agency—

**Mrs Cunningham:** Could you go to the piano teacher?

**Mr Elston:** Or your clergyman or something.

**Mrs Cunningham:** Who can you go to, is my point, because I advise people and they have been advised otherwise by their lawyers, and I am now seeing that there is



probably a vested interest here, so whom shall I tell them to go to?

**Ms Pilcow:** Well, you are very well advised to go see a lawyer if you are dealing with your rights to support. I think it is a good idea to know what your rights are before you enter into an agreement to amend those rights.

**Mrs Cunningham:** But the lawyer sitting there yesterday said she would charge \$1,000.

**Ms Pilcow:** I do not recall that.

**Mrs Cunningham:** Was that not the question you asked, to change the agreement? I thought you or somebody asked the witness how much she would charge.

**Ms Pilcow:** What they were talking about is how much it would cost if you wanted to bring an application to vary a support order—

**Ms Feldman:** Through the court.

**Ms Pilcow:** —through the court. Now, parties do not have to go to court. They can go to their lawyers, they can do it very simply, or they may not go to lawyers at all, which is not a good idea if they do not know what their legal rights are.

**Ms S. Murdock:** Section 3f says: "An agreement by the parties to a support order to vary a support deduction order and any agreement or arrangement to avoid or prevent enforcement of a support deduction order are of no effect." That does not clarify, I do not think, that you can, by way of agreement, vary a support.

**Ms Pilcow:** There are two provisions that deal with the variation issue. Section 3e says that the only way you can vary your support deduction order is by varying your original support order; that is in 3e. What this says is that you cannot deal with your support deduction order on its own. You cannot just say: "I choose to have my order enforced to this extent. You can deduct 50% of my wages but, in fact, my support order requires a lot more." You have to deal with your support order first, and that is 3e.

**Ms S. Murdock:** Yes, right.

**Mrs Cunningham:** Perhaps Mr Elston is following my line of questioning here, but I thought he asked my same question to a lawyer and now we are finding out they do not have to go to a lawyer.

**Ms Pilcow:** That was a specific question: How much does it cost if you go to a lawyer to bring an application to vary a support order; what does it cost if you go through to a trial? That is one question. Another question is: How can you go about varying a support order or a separation agreement? That is a different question.

**Mrs Cunningham:** Okay.

**Ms Pilcow:** There are any number of ways you can deal with that and the cost varies substantially, depending on which option you choose and how hotly contested it might be.

**Mrs Cunningham:** But if parties agree and they simply want to have it done in some way, how could I advise this gentleman to get it done so it does not cost him any money?

**Ms Pilcow:** He and his wife can get together and do it on their own and sign a piece of paper and that will become a domestic contract.

**Mrs Cunningham:** And can they then take that to the SCOE office which would administer it?

**Ms Pilcow:** They need to take it to the court first and register it with the court. You do not have to have a court proceeding; you would register it with the court and with SCOE.

**Ms Feldman:** There have to be certain requirements to make it into a domestic contract under the Family Law Act. If those requirements are present it could be on a napkin. It could be registered with the court and then registered with SCOE for enforcement.

**Mrs Cunningham:** So no lawyer has to be involved. They can take it into the court office themselves; family court, I am assuming.

**Ms Pilcow:** Provincial court.

**Ms Feldman:** Yes, the provincial division; right.

**Mrs Cunningham:** Provincial division.

**Ms Pilcow:** Yes.

**Mrs Cunningham:** Okay. So now—

**The Chair:** It is easy to see why we need a full educational program, as has been suggested and recommended along with the—

**Mrs Cunningham:** I think most elected people here today are having some difficulty with this.

**The Chair:** Indeed.

**Mrs Cunningham:** Certainly in my job, and that is what I am trying to clarify, advising my constituents.

But the next one then comes to this gentleman's concern, and that is 3f. Now, he is saying, and I think he is right, any support deduction—excuse me, this is after we have got the deductions, is it not?

**Ms Feldman:** Agreed.

**Mrs Cunningham:** All right. They are being deducted automatically and the husband and the wife say, "Look, we don't want this deducted any more." In the same way that they want to change their original agreement, they are now saying, "We don't want this deducted any more." How can we then allow these people not to have it deducted?

1650

**Mr Wessenger:** If I might answer that: You cannot sort of set the deduction order. You can set aside the order by agreement that makes the original obligation, but as long as the original obligation exists, you cannot change the deduction order.

**Mrs Cunningham:** Because that is a court order.

**Mr Elston:** They both are.

**Mr Wessenger:** They both are. Yes. There are two orders: the order that creates the obligation to pay support—

**Mrs Cunningham:** And we are writing yet another step in here. Why would we have this clause? Could I have some member of the government please tell me why we have got 3f?

**Mr Wessenger:** Yes. Because you do not want the deduction order eliminated when the order for obligation to pay is still outstanding.

**Mr Elston:** I think really what is being said is, you have two cases in which you can avoid a support deduction order. One is the unconscionability test, and the other is if there is consent by the parties at the time that the issue is tried. You cannot, after the fact, opt out of the support deduction order. After you have gone and had a court support order issued, you can, however, amend that by going to the court with an agreement, however drafted and among whom it is approved, registered then at the court, and that will be sent off to SCOE. They still have a support deduction order, but they will then allow themselves to follow the new amended amounts to be deducted, which could include in some cases, by the way, a deduction to the sum zero for some children who may have gone away from school or whatever. It is my impression, however, that one would not be allowed to amend the support order to the amount zero, which would have the effect of avoiding both the support deduction order and the support order in the first place.

**Ms Pilcow:** You can, in fact. You do not have to agree to support for your children. The court always has an over-riding interest.

**Mr Elston:** But I am just pointing out the fact that if you say there is no opting out, that is okay. But it would be unusual to allow the parties to come together, the coercion and all those other issues at stake, to render the support order itself to an amount zero, which would have an effect on avoiding the payments. So I think you can take it down to an amount, but you may end up with an amount of a dollar or something just so that the support order is kept in effect and the support deduction order actually exists.

**The Chair:** I think that is an excellent suggestion, Mr Elston. Perhaps you could enter it when we go into clause-by-clause.

**Mr Elston:** Just trying to be of help—and from the opposition, I know.

**The Chair:** You are. You are, sir.

**The Chair:** Mrs Cunningham, have you—

**Mrs Cunningham:** Please go on. I was trying to help solve a problem.

**The Chair:** Did you have a question for the witness after the discussion of 3f?

**Mrs Cunningham:** I was trying to be helpful in getting those explanations. I hope I was.

**Mr Rosenitsch:** You have another aspect I am thinking of, and that is, we have to look at the sociological and psychological effects of what is happening after the separation process. People want to scale down the escalation. They do not need to get down to a court to sign these things off. Life goes on, and children grow up, and spouses meet other spouses, and these things can phase out by themselves. They do not need to go back to the court.

I guess one person could always hold the order there if it is never—you know, they could just disregard it and always bring it back some day and say, "Hey, I want to

enforce it now." But if things are working well, why can people not just carry on without interference of the governments in the courts?

In fact, I guess the whole point is the mandatory part for the people who are paying and being good people about it. Why punish them?

**The Chair:** Okay. Thank you, Mr Rosenitsch. Do we have further questions? Mr Mills. We are running short of time.

**Mr Mills:** How much time have we got, Mr Chairman? Are we hard up for time for a couple of comments?

**The Chair:** We are past time, but—

**Mr Mills:** Okay. Thank you, professor. I thought that was a really punchy deliverance here this afternoon.

**Mr Rosenitsch:** I have one question. When is this clause-by-clause debate going to happen?

**Mr Mills:** We cannot tell you that.

**Mr Elston:** The 25th or the 26th.

**Mr Mills:** We do not know ourselves.

**The Chair:** Mr Rosenitsch, that was a matter that was up for debate and often there is controversy in terms of when 12 very busy people can get together. If you wish to stay around, that point will be confirmed after today's proceedings. I think it will be most likely in two weeks' time.

**Mr Rosenitsch:** I would also to say that the Human Equality Action and Resource Team would be available for any further questions on these issues or if you want some further input, because we are people who are dealing with people out there who are hurting.

**The Chair:** Thank you, sir.

**Mr Mills:** Excuse me, Mr Chair.

**The Chair:** Yes, sir. Mr Mills.

**Mr Mills:** I was speaking. I was interrupted by the professor.

**The Chair:** You were? I thought you were thanking him.

**Mr Mills:** You heard what the professor said. You went back to yourself and then you said, "Well, that's good," and we carry on. Is it in some order?

**The Chair:** Do you have another question, Mr Mills?

**Mr Mills:** No. I am devastated. I am not going to say anything now. That is it, because it seems to me that it is a bit peculiar. I was thanking the professor for a punchy delivery and also I just wanted to tell him that in his first page, he says that—I do not have any difficulty in understanding the difference between a garnishment and a support deduction at all.

**Mr Rosenitsch:** You do not.

**Mr Mills:** No.

**Mr Rosenitsch:** Oh, well, let me explain it to you.

**Mr Mills:** Now, listen. Just one moment, sir. You and I might differ over income tax. That is a deduction. I might call it a garnishment, in my peculiar humour. Anyway, I am not going to get into that. I just want to touch on one point. Maybe I have got a thin skin and I am sensitive, and I would hope that you do not mean, in your concern that



"the custodial parent and children could move to some other jurisdiction or foreign country such as Jamaica, Bangladesh, Guyana"—I do not know if you sort of think that everybody who is going to be a problem is from those countries because you do not mention the United States, England, Denmark, Norway or anything like that.

**Mr Rosenitsch:** It is only mentioned because of cases we run into.

**Mr Mills:** I am pretty sensitive to that sort of way of speaking, anyway. Thank you, Mr Chairman.

**Interjection:** I think it has to do with extradition.

**The Chair:** Any further question, Mr Mills?

**Mr Mills:** No. That is a comment. Thank you.

**Mr Rosenitsch:** I would like to respond to the honourable member, if I am allowed to.

**The Chair:** Please.

**Mr Rosenitsch:** First of all, the various countries are mentioned because of actual cases of people going to other countries. Second, I would like to respond to the difference between a garnishment and a deduction. One gets a benefit out of a deduction. We deduct income tax, the government collects that money and gives me benefit—gives me the police protection, the army, the roads, the airlines, whatever. It is paying for service. I am getting a direct service when I have something deducted. When I get my union dues deducted, my union provides me a service, and so on. I pay for such service. When you get a garnishment, someone is taking money from you because you owe it to somebody. You are not getting anything out of it.

**The Chair:** Thank you very much, sir, and I apologize for bringing you back again. I hope you have overcome your devastation, Mr Mills.

**Mr Rosenitsch:** I will come back any time you want.

**The Chair:** Thank you.

#### FATHERS FOR JUSTICE

**The Chair:** Our next presenter is Moe Rowsell from Fathers for Justice. Mr Rowsell. You, I believe, have been here for a while and you understand what the proceedings are like.

**Mr Rowsell:** Yes.

**The Chair:** You may wish to know that there is a format that is supposed to be followed. You have heard what it is and then seen that perhaps it is not always so closely followed. Thank you, sir.

**Mr Rowsell:** All right. Can you hear me, all? I am here representing Fathers for Justice. I am the vice-president. Fathers for Justice is a non-profit, charitable organization that deals with matters of custody, divorce, separation and access, and through our experience over the last seven years we have been quite involved in these issues.

Fathers for Justice has stood before other legislative committees with respect to proposals dealing with matters of family law, and we are pleased to be able to participate in addressing the matter that is set before us now. In the past we have lobbied for fairer and more just laws that would lend themselves to a more conciliatory approach to questions relating to separation and divorce. The issues

being dealt with here in Bill 17 are symptoms of flaws in the overall judicial handling of separation and divorce and the ensuing matters of custody and support.

Fathers for Justice believes that supporting one's children is the responsibility of every non-custodial parent. In the past, we gave our input and support to the introduction of legislation in Bill 14 dealing with delinquency of support payments. At that time, we believed that other legislation would follow that would deal with some of the issues that often cause defaulting of support payments.

Unfortunately, Fathers for Justice cannot endorse the passage of Bill 17, in the belief that it is counterproductive to solving the overall conflicts that are inherent in our present laws and court system. In respect to settling problems arising out of separation and divorce, we feel that the legislation has already been put in place to deal with the issue of support payments, and this revision will only produce more confusion and conflict on even larger segments of society.

#### 1700

Support and custody orders enforcement cannot do the job. Why? This bureau was initiated to handle the problems of delinquent support payments and to alleviate the problems of custodial parents having to initiate legal proceedings. SCOE was given wide-ranging powers to investigate claims, initiate legal procedures and recapture default arrears. Yet with all these powers, financial resources and manpower, SCOE has shown a dismal inefficiency in all areas of their operation from recapture success rate to accounting. Their accessibility to the public that they are serving is equivalent to sending a letter by dog sled to Hawaii.

Fathers for Justice, however, believes that the existing system that is in place is better than what will be achieved if Bill 17 is implemented. Adding another deduction system on what is already in place will only lead to further problems in accounting, collecting and the overall costs that will be incurred by society. This revision will only add private-sector inefficiency on top of bureaucratic inefficiency. How many times will a dollar bill be handled before it gets to the support recipient?

"Stick up your hands and give me all of your money." When will we start to address the problems that are at the root of this very serious social dilemma? We reproach the government for this attitude of money first no matter what kind of hardship it places on the non-custodial parent. Fathers for Justice would like to make these recommendations and asks that they be taken into consideration before proceeding with Bill 17.

1. Standardization of support orders to relate to the actual cost of adequately raising a child: This amount should be the responsibility of both parents and be shared equally with the presumption of no fault. Please refer to the attached Social Infopac which is a study done by the Social Planning Council of Metropolitan Toronto. I believe that there is probably a more updated version of this but we do not have a copy of it. We also understand that the Attorney General's office is studying a model for standardizing support payments. It is our hope that their conclusions will be the same as ours, that by presuming no fault

and by setting standards relating to cost, less re-litigation will be there to clog up the courts.

2. Fast-track availability to the courts for review of support in light of financial changes: Access to the courts for changing existing support orders is slow and confrontational and places many non-custodial parents far in arrears before they can even see the inside of a courtroom. Support orders are rarely changed except to increase them and arrears are seldom reduced or erased. Costs of this relitigation probably costs more in government dollars than it recoups.

3. Presumption of no-fault custody: Parents divorce themselves; it need not mean that they divorce their children. Maximum access should be the norm, not the exception. Specified access should be part of any separation or custody agreement and should be enforceable with easy access to the courts if it is being denied.

4. Denial of access continues to exist and be accepted, or at least not enforced: This is probably the saddest, most frustrating situation any parents will find themselves in. This is as much an injustice to our children as it is to the non-custodial parent. This is probably one of the main reasons for the purposeful refusal to pay support payments. The government should encourage the setting up of access exchange programs, supervised access programs, co-parenting programs and give the courts the power to order their use. The best interests of the child is to have parents who co-operate, and co-operating parents, down the road, have less problems to deal with in their day-to-day lives.

5. Mediation as opposed to litigation: Too often the adversarial system causes more trouble down the road and subverts the principles of justice more than any area of our social fabric. Court delays and bulldog lawyers can wipe a family's financial resources out. Where one of the parties is receiving legal aid, there is no incentive to reach conciliatory agreements and moneys are tied up for years. Moneys that could be used to establish life after divorce end up being depleted in long and foolish court battles.

Mediation should play a greater role in determining what is in the best interests of the child and parents reluctant to try these services should be assessed as to whether their motives are in the best interests of the children. The Supreme Court has stated that criminal charges that are prosecuted too slowly can be thrown out, and yet in family court, support custody and access issues can take years.

We would like to see the government adopt an attitude of mediation, rather than litigation, and encourage separating parents to stop acting like children and take care of their children. As our system stands, we have no-fault divorce, but fault is very prevalent in the family courtrooms when it comes to decisions of custody, access and support.

Dealing with Bill 17 itself, a small canvass that our group did found that businesses seem fully unaware of Bill 17. It would seem that they should be consulted, since the government wants them to take on the extra responsibility and play the devil's advocate. The effects on people with fluctuating incomes, seasonal incomes or in lower-paying positions may find their jobs on the line. While it is easy to

change a clause in the Employment Standards Act, the extra paperwork may turn the heads of some employers.

In conclusion, I would ask that Bill 17 not be enacted and that the government should look into the causes and effects of why default payments are not being met. Read in any paper about the economic downturn and plant layoffs; we are in a recession and this is going to show up in the courts. However, access to the courts has been hidden away from the public and simple cases are being delayed and drawn out.

Non-custodial parents can play a vital role in the continuing upbringing of their children. This Bill 17 wants to turn us all into debtors and automatically pronounce child support as a punishment. Non-custodial parents support their children in many ways when allowed to continue to play an intimate role in the child's life.

**The Vice-Chair:** Thank you very much for that interesting brief. Before we go into questions, I would like to announce that the 5:15 witness will not be presenting. Mrs Cunningham, any questions? I am sorry, Mr Carr.

**Mr Carr:** I think what has come out of this is a very clear indication that the situation that goes on with the lawyers and in the courts is just absolutely amazing. No offence to some of the lawyers who are sitting on this committee, but it really is ridiculous when you see the amount of money being spent and what they actually do. I would commend you in some of the mediation process that you are talking about. I would much rather see us spend money on mediation and trying to get an equitable solution, rather than the way it is now, where we deal with our system of confrontation.

If Bill 17 is proceeded with and in fact becomes law, what will the reaction be, do you feel, from some of the people like your group out there? What will their feelings be?

**Mr Rowsell:** I would say that we felt that Bill 14 that was brought in was not really great, but we supported it at that time. We cannot support this one because we just see the problems that people are having with SCOE already are only going to be aggravated by bringing in another agency to give money to another agency to give money to another agency.

We already have members in our group who have 100% deduction in garnishees being taken off unemployment insurance. We have other people who have 50% of their income taken off from the gross and then have 49% deductions taken off, basically leaving them in poverty and putting them at a disadvantage in being able to deal with their children and their life in general. Basically, I would see that by doing this the dedicated dodgers are just going to change jobs, and the paperwork included in that—the government wants the deductions to be taken off paycheques within 14 days of receipt of the order, and employees are supposed to give 10 days' notification to the government as to their change of address or their change of employment. This is a nightmare that will make SCOE look like fantasy land.



1710

**Mr Carr:** With the way it is now—and you may have been here when we heard about this figure of 75% which, as I said earlier, we should completely discount and throw out because we find it is not in fact correct. What is your feeling of why this figure is being used by the people in the SCOE office?

**Mr Rowsell:** To be quite truthful, I wonder about any figures that I receive from SCOE because of their backlog in work. Personally, I am one of those 75%. I am not in arrears to any great extent. I am a non-custodial parent and I see my children whenever I want to. I support them above and beyond the support payments that are being deducted or my rightful amount given, and I will increase that. As situations stabilize and parents start to learn to co-operate and deal with the children as children and not as assets of a divorce, more is going to be done for those children. The continual re-litigation of issues just detracts from the emotional satisfaction that one gets from the children and continues to be an irritant farther down the road.

**Mr Carr:** All it does is make the lawyers rich, it seems to me.

**Mr Rowsell:** I think the California experience is eventually coming here and that is joint custody and the presumption of no-fault in child matters. The statistics on mediated settlements between parents show that where a settlement is mediated, where the parents are actually involved in coming to an agreement that is amicable and beneficial to all parties, they stay out of the courts. There is no need for them to go back into the courts, whereas you have got situations where court orders, particularly initial court orders, the court orders that are supposed to be temporary—unfortunately the initial court order that goes through is often the one that one has to fight the most.

Again, this comment was brought up by other people, that people are being advised by their lawyers: “Oh, you don’t have to be at that court hearing, you don’t have to be. I’ll take care of everything.” The attitude of the lawyers is for arbitrary litigation. When you walk into a lawyer’s office it is: “I’ll get you everything you want. I’m your friend; I’m doing my best for you.” Yet many of these lawyers do not have a clue as to family law or the use of mediation, or the effects that long-drawn-out litigation has on the emotions of the parties that are going through it.

**Mr Carr:** They certainly do not have the children at heart, that is for sure.

**Mr Rowsell:** I will tell you a funny story about when I was going through court. Fathers for Justice, I should say, is an organization that tries to help people who want to go into court and not take their lawyer with them because, basically, if I want to go into court, if I want to file the papers, it is my right. While it is discretionary on judges as to whether they want you to represent yourself in front of them, it certainly is your right, and the more prepared you are to do that, in being familiarized with the laws, the more success you have in the courts.

I was going to court, in the Unified Family Court of Hamilton, over issues of custody, support, abuse, mental cruelty, peace bonds and restraining orders, and I was hav-

ing my wife’s lawyer tell me that my wife would not be present at that hearing because she was sick. That was quite a valid reason, and he did not actually have to tell me, because at that time I was living in my wife’s home taking care of my children while she was in the hospital. This was for a term of six months. And yet I am not a custodial parent.

If I went into a court and she was represented by legal representation, the first thing that that lawyer would tell her is, “You can’t have joint custody. It’s impossible to live with.” I resent this idea that non-custodial parents are just supposed to be a pocketbook for the wishes of the custodial parent.

**Ms S. Murdock:** I just have a number of comments and one question. First of all, numbers 4 and 5 in here: I thought for sure that Mrs Cunningham wrote them.

**Mr Rowsell:** Well, good for her.

**Ms S. Murdock:** It was all on mediation and all very valid points, and I know that is dear to the heart of Dianne.

On page 1, I think actually many of your points in the entire presentation were summed up in the sentence that everything that you talked about today and all the problems, other than Bill 17, are the symptoms of flaws in the overall judicial handling of separation and divorce. That sums the whole thing up, because we have been hearing this time and time again.

It is true that Bill 17 is only going to be handling the enforcement aspect of any kind of custody legislation and the access sections are not handled by this bill, but actually even access is not really handled by us.

**Mr Rowsell:** It is a drop, yes.

**Ms S. Murdock:** You have got two jurisdictional levels handling family problems, which makes it a real difficulty because you have to negotiate with the federal level in order to get any kind of legislation that is going to work with the provincial level at the same time. Just in your organization alone, I am sure you know that that takes all kinds of time to get everybody on side.

But all of the points that you made are very valid. The one that I particularly like is fast-tracking the availability of the courts for review of support. Personally, I see that as one of our downfalls because if you have to go back to court all the time, the cost and the time involved is going to cause a problem.

The question I have for you is on page 3 on the standardization of support orders. Earlier today we had a father in who was recommending that same kind of thing. My question this morning, and it is still the same, is, for the non-custodial parent who is paying support and, say, makes \$70,000 a year and the non-custodial parent paying support and making \$30,000 a year, if you standardize court orders, then you are saying that both of those parents would pay the same amount of money.

**Mr Rowsell:** Yes.

**Ms S. Murdock:** Now, depending on what it is and how many children there are, of course—I realize that—but now you are seeing a standardization of orders to the point where the non-custodial parent is unable to support himself or herself.

**Mr Rowsell:** No, I would expect variations in that amount. What I am expecting is that to be a realistic base amount so that children are not being deprived, but at the same time the court system in setting down support costs has such a wide variety of it that it is so easy for the top end to be used rather than the bottom end.

In so many instances, it is again that initial court order that may make or break the healing of the relationship between the two spouses. If a court order goes through, particularly in areas where a court order goes through without representation, I think that is a tragedy. If somebody is definitely avoiding the court not to be there, that is fine; hit him. But in the case where a person learns that they have a court case in two days or that they were supposed to be in court today and are not there, and an order goes through such as Henry, who spoke earlier, said, where he was being charged more than he actually made, there is no easy solution to reversing that.

1720

**Ms S. Murdock:** No, because the other thing is, in that same regard, you can have the judges sitting there wondering where you are—not you specifically—and then putting the matter over to another day, giving the benefit of the doubt. You then backlog your court all over again when it is backlogged enough.

**Mr Rowsell:** That is true, but with the standardization of support, there you have at least somebody to say: "Well, I'm going in to court. This is what I can expect to get."

**Ms S. Murdock:** Right.

**Mr Rowsell:** There is a rule of thumb here. People actually have looked into this matter and know that this is what it costs to raise a child.

**Ms S. Murdock:** Boy, it is really—

**Mr Rowsell:** It is a hard one, but—

**Ms S. Murdock:** Oh, I do not know how it would be done. I still do not know how it would be done.

**Mr Rowsell:** Now, at the other end of it, I would have to say that custodial parents and non-custodial parents who are involved with their children, if you say, "well, this is a low figure for somebody making a high income," in one way their high income will be taxed accordingly because they are not having those deductions, but also a non-custodial parent who is involved with their children will put the extra costs into it.

It is usually in situations particularly of denial of access, where the non-custodial parent is basically saying, "Well, I'm paying for a hole in the ground," or "I'm supposed to be a responsible person in supporting the children, but you're saying I'm not responsible enough to be part of their lives." Particularly in the areas where access had been agreed upon and then denied, it is hard to argue with the fact that they are being used.

**Ms S. Murdock:** I know the Liberals probably want to ask you a question.

**The Chair:** I believe that Mr Mills does as well.

**Ms S. Murdock:** Oh, sorry.

**Mr Mills:** I was just going to ask you, sir, I have listened to you intently and all the ramifications of what you said I have taken note of, and hopefully we will come to grips and discuss them as a group here later on when we come to the clause-by-clause.

I think that the whole intent of Bill 17 is to ensure a regular payment system rather than the haphazard way we are doing things now. That is the intent of the bill. And I was rather interested to hear you say, "I'm not that much behind." To me, that is what you said. "I'm not that much behind." So I am saying to you that the thrust of Bill 17 is, in my opinion, to make sure that nobody is that much far behind. I am just wondering, sir, how much far behind you are.

**Mr Rowsell:** How much far behind? Well, none of your business, but—

**Mr Mills:** No.

**The Chair:** Excuse me, with respect, Mr Mills, I—

**Mr Fletcher:** It is none of our business.

**Mr Mills:** Well, I just say—

**The Chair:** Excuse me, with respect, I believe that the witness has the right to respond to that question if he wishes to, but not the obligation.

**Mr Mills:** Well, I just think that it is part of the discussion here.

**Mr Rowsell:** I am behind, have been behind, have not been behind, basically I am not too far off, because I represented myself in court and did not end up with the \$50,000 or \$20,000 or \$30,000 legal fees. Quite truthfully, when the separation hit me, I did not have the money to do it; that is why I did it on my own. I did go to several lawyers. Through the Unified Family Court in the two years that I was there and the six adjournments that I had, why should I pay somebody so that they can file the paper and tell me in court, "Well, we're not going to listen to you today because your wife is ill"?

**Mr Mills:** I would just like to make it clear. I do not want to be misunderstood. I was not trying to put you on the spot, but I guess that what I was trying to put across was an analogy of what Bill 17 means to me and what I think the government is trying to do on what you said, that is all.

**Mr Rowsell:** Yes. I noted down here, "Gord Mills is optimistic." It is all very fine and dandy for you to be optimistic, because it is not your dollar bills. But in the case of somebody who is having deductions taken off now—in deductions, all right? This is something under Dianne Cunningham's name that I noted here. My understanding of the law is that you can only garnishee up to 50%, and yet we have members who have 100% of their unemployment insurance garnisheed from two different wives, two different sources. They both got 50% garnishees, and yet after the fellow had gone into court and had the judge say, "Oh, no, you can't do that," it still continues, mainly because the court orders that are going through are slowed down by SCOE and the justice department. So it is hard to say whether the court influence extends itself on the bureaucracy and whether the bureaucracy is responding



to court orders in the manner as quickly as the judges think that they should be, and unfortunately they are not.

On deductions—I would like to stay on that for a minute—under Bill 17, you want to take off support payments from the net of a non-custodial parent's income. I would wonder why it is that a non-custodial parent would be paying the taxes and deductions on the gross and then having it removed from the net when the actual responsibility of paying the income portion of that money is actually the responsibility of the recipient or the custodial parent. So basically, from your system here, taxes are going to be paid on that money by the non-custodial parent, so it takes it out of his use, and yet down at the end of the tax year, it is a deduction for them and it is an income on the custodial parent. And yet, you know, here it is basically taking money out of the non-custodial's pocketbook that could be used in better circumstances.

I would like to say that non-custodial parents do have the right of a lifestyle after divorce. This seems to be something that the legal system does not seem to agree with, and that is that after you have 100% of your UIC garnisheed, where do you go from there? If you do not have any money, you should be able to go to welfare, but if you are actually recorded as receiving money from unemployment insurance you are not eligible for those social assistances. So basically, once you have put somebody down in the hole, now you are putting your foot on their neck to keep them down there.

**The Chair:** Mr Wessenger has a brief comment.

**Mr Wessenger:** It is all right.

**Mr Rowsell:** Mr Wessenger, I would like to say that I was quite happy that you are pleased to have a look into one person's case earlier today. I would not be so pleased myself that you decided to look into one drop in the bucket.

**Mr Elston:** A lot of the questions have been answered. But I wanted to say to Mr Mills, actually, that this gentleman seems to be quite capable of defending himself. He has also indicated that he has often, as well, paid extra towards the support of his children, and I know you would not want the impression left that for some reason this person is not doing a reasonable job in making support and otherwise—

**The Chair:** Mr Elston, on one point—

**Mr Elston:** Can I just carry on—

**The Chair:** One little point, Mr Elston. I do not think that any witness should have to defend himself.

**Mr Elston:** Sure. I know, but I just wanted to make it clear—

**Mr Rowsell:** You have not been at the court lately.

**Mr Elston:** I just wanted to gain from you the fact that while you represent people who are looking for fairness and equity and some equality before the law in this situation, I heard you say something interesting. If a person is being unavailable or is being recalcitrant or is refusing to support children, I suspect that your whole organization wishes to see that person pursued so that their responsibilities can be enforced.

**Mr Rowsell:** Certainly.

1730

**Mr Elston:** And in fact the essence of your organization is that you promote the moral and social and legal requirements of supporting children of the marriage.

**Mr Rowsell:** Certainly. We also support the idea under the Divorce Act of no fault, and yet there is a clause concerning the normalization of the relationship by allowing for spousal support for a certain length of time to let, usually the woman, get back on to her feet or into the workforce or ameliorate the situation. But again with a lot of these court orders, if the money is not there, the court order is useless; and if a court order goes through that has to be fought, in many cases if the friction is so much you are looking at the non-custodial backing away and saying: "Well, I don't want to see the children any more. It hurts me to see the children." These are the attitudes that we want to get away from. Our main concern is for children. It is not beneficial to the children to have one member of the family all of a sudden disappear.

**Mr Elston:** If you have two people who have separated with children and there is an existing, voluntary or even court-enforced current order for payment of support that is going on without default, without problem, that can be worked out, but sometimes the means disappear and then you catch up or whatever. Would you feel that it is inappropriate to introduce a third party into the equation? We described it earlier. Professor Rosenitsch actually described the wedge issue that we had found from a previous presenter. From a social or psychological standpoint, do you find the intrusion of the non-participant third party in the psychological drama an interference or a hindrance?

**Mr Rowsell:** No, I do not, if it is in the form of being dedicated to solve the problems rather than fight over the problems. Definitely, mediation. The legal profession itself will not endorse mediation. Many lawyers will say: "Oh, well, my client is on the skids. I would not send him to mediation because he will get chewed to bits," and yet it is quite the opposite of what mediation is all about. Proper mediation techniques would take into consideration all aspects of an agreement. After mediation there is certainly a need for specific legal techniques, but usually these are in the area of contract law rather than the social factors.

Also, there is the fact that you might want an actuary to look over your agreement to bring out the best in the financial viability of what is best for the children. There is a big push here on defaulting and recapturing defaulted money. The one area of social services that really does not ring true in this respect is that if a father or mother or a custodial parent is on family benefits, the money that they receive in support payments is directly reduced from that social assistance. So actually, in low-income situations, it is better to settle for a low specified support payment, with the understanding that the non-custodial parent would be more amiable to supporting the children on top of that.

So basically the whole argument about women or custodial parents not receiving benefits is exonerated by the government. It is no secret that the government finances social services at below poverty line. They have

already made their class of poor people. Personally, being the Red that I am, I would like to see the government bring in guaranteed annual income and get rid of all of these bureaucracies.

**Mr Elston:** I think we had better stop there, although I think it is interesting because really what you have just said is this: that because the social service system pays and then deducts against support orders, it maintains people in a position of poverty. For every dollar that is collected for the Ministry of Community and Social Services and returned to the government, it does not help one iota the issue or the forward movement on the war against child poverty. In fact, the more money that is collected here by the government and recovered and sent back to the ministry is another strike against children and women climbing out of the situation of poverty.

**Mr Rowsell:** I still have a hard time believing that the government can believe that the amount of money that it spends on spinning its wheels and collecting money actually has a ratio that relates to collecting money. Certainly they are harassing a lot of people, but in the truest form it is probably costing them more money than they are—

This is maybe a question that I could ask any of the legal advisers: What does it cost an hour to have a courtroom running? Yet in most cases of support, the amount of time that a person spends actually in the courtroom is probably 15 minutes. I think that we should also find out if the courts should not be used as the boxing ring. The idea that litigation has to be dirty and mudslinging is passé as far as I am concerned.

**Mr Elston:** Mr Chair, thanks very much for your tolerance of my continued questions but this has been a very interesting presentation. I think that we owe a couple of minutes of consideration, at least, to some of the suggestions that have been made by this particular presenter.

Actually, this afternoon's presentations, all of them, have been quite good but particularly today there came to us several interesting suggestions and it has been well worth while, I think.

**The Chair:** Thank you, Mr Rowsell.

Perhaps I should call to see if there is an Elizabeth O'Breza present. I believe that Mr Smith has cancelled, so Mr Rowsell is the last of our witnesses today.

We have the subcommittee report which I would like to read into the record. I am informed by the clerk that I unfortunately cannot dispense with the reading unless it is already in Hansard, so with your tolerance:

"Your subcommittee met on Thursday 14 February 1991 and agreed upon the following:

"1. Clause-by-clause consideration of Bill 17 will commence Monday 25 February 1991 at 1 pm;

"2. Consideration of standing order 123 designation, scheduled for 25 and 26 February, shall be rescheduled to either 27 and 28 February or 18, 19, 25, 26 March and 1 April at the discretion of the third party and, of course, of the committee as a whole."

Any questions on the subcommittee report?

**Ms S. Murdock:** The 25th at 1 o'clock. Nothing on the 26th?

**The Chair:** The 26th is unclear as yet. It may well be, of course, with legislation like this, that it may take more than a few hours for clause-by-clause.

**Ms S. Murdock:** Oh, I would say so. Yes.

**The Chair:** So most likely the 26th might be used for that purpose.

**Mr Elston:** It sounds feasible.

**Mr Mills:** Have we got the dates in March right? It is saying either/or. You said either the 27th—

**The Chair:** Either the clerk or the subcommittee members—I did not participate in this subcommittee report.

**Clerk of the Committee:** The reason for the dates in March is the standing order 123 designation is to take up 12 hours and therefore I have scheduled them for every Monday and Tuesday that this committee is to meet up to a total of 12 hours. That is why it went up to 1 April, assuming that we start at about 3:30 and end at 6 when the House comes back. So we have just scheduled them for the first 12 hours of the committee when the House resumes.

**Mr Morrow:** Doing clause-by-clause, for our own scheduling purposes, you are only scheduling one day. Should that not be two for our own scheduling?

**The Chair:** I understand that most likely it would also be the 26th. Is that not right?

**Clerk of the Committee:** What the subcommittee report says is that clause-by-clause will commence on the 25th. There is no end date and this committee is scheduled to meet for that entire week.

**The Chair:** Okay. Any further discussion? Could we have someone move the acceptance of that report?

**Ms S. Murdock:** I will move that.

**The Chair:** Ms Murdock moves. All in favour? Opposed? Thank you. The clerk would like to go over the agenda for next week, please.

**Clerk of the Committee:** The agenda for next week, as it currently stands, is: Monday 18 February we will be meeting at 1 pm with the Premier and the Conflict of Interest Commissioner, and this is all in committee room 2. We are not scheduled to meet on Tuesday 19 February. On Wednesday 20 February in the morning we are meeting with the Attorney General and staff and perhaps one former Liberal minister. We are not scheduled to meet in the afternoon of the 20th. On 21 February we are meeting in both the am and the pm.

**Mrs Cunningham:** Mr Chairman, I was given a letter. I thought it had gone to everyone but it has not. It is from Elliot L. Lerner, who is a lawyer in Downsview, Ontario, and I found it most helpful when I was reading it. It all of a sudden struck me that I am the only one with it, so I would like to give it to the clerk and have it sent to other members of the committee. I found it most helpful. It was copied to Mr Carr, my colleague, and Mr Harnick but I think there are some very important points in it so I will give it, for the record, to the clerk to have it distributed as she sees fit.

**The Chair:** Thank you very much for that information, Mrs Cunningham. I think we are adjourned until Monday.

The committee adjourned at 1744.



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Monday 18 February 1991

### Standing committee on administration of justice

Conflict-of-interest guidelines

## Assemblée législative de l'Ontario

Première session, 35<sup>e</sup> législature

## Journal des débats (Hansard)

Le lundi 18 février 1991

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Lignes directrices en ce qui  
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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday 18 February 1991

The committee met at 1305 in committee room 2.

### CONFLICT-OF-INTEREST GUIDELINES

**The Chair:** I would like to call the meeting of the standing committee on administration of justice to order. This afternoon we are meeting from 1 o'clock until approximately 4 o'clock with reference to the conflict-of-interest guidelines; to speak to them we have Premier Bob Rae.

### PREMIER OF ONTARIO

**Hon Mr Rae:** Thank you, Mr Chairman. I cannot remember the last time a Premier appeared before a committee when I was in opposition, but I am just delighted to be here and to basically answer questions. I have a very brief statement that I would like to make. I would like to explain a couple of things and respond to a couple of earlier comments that had been made by opposition critics with respect to this issue and try to explain my own views and the views of the cabinet with respect to this situation.

The first thing I want to say is that in my view we have made, and are making, a lot of progress. When I say "progress," I mean historically speaking. If you look at this issue, which is one that has troubled different governments at different times, I think it is worth pointing out that we have now reached a level of understanding and sophistication and of knowing some of the pros and cons of different ideas, and we have had a fuller airing of these things over the last few years than in the past.

I think basically the public is well served by a continuing debate, and it is because of my desire for a continuing debate that I encouraged very much the House leaders to establish this committee to consider further the questions of conflict laws as they need to be continually updated.

Members should have received—which was done very helpfully by staff of the Ministry of the Attorney General—a comparative chart with respect to a set of guidelines which should have been made available to people, showing some of the evolution of what has taken place.

When I made the statement in the House on 12 December 1990, opposition critics made different points and I want to respond to them very briefly.

The critic for the Liberal Party, Mr Sorbara, who is here, objected at a policy level and a philosophical level because he felt that with the guidelines, no one who had any business interests would ever enter politics. I would just disagree with that and say that is not the intention of the additional guidelines which I put forward for the cabinet. Rather, it is the intention to say divestment where possible; divestment is obviously the easier solution, but if that is not possible for a number of reasons and criteria that are set out very specifically in the guidelines, that it then is set up as a trust and is explained in that context.

I do not know whether members are interested in this, but in 1986 I wrote to Mr Aird, who was establishing the proposal for the legislation in the previous government. If members are interested in seeing that letter, which is a six-page letter, I am happy to leave it with the committee; and if you want to have some further insight into some of the reasoning behind the distinctions I have made, I would be happy to leave that with members of the committee.

The other thing that Mr Sorbara said was that I was taking all this into my own hands and taking it out of the hands of the commissioner. That is the opposite of what I intend to do. The difficulty is that by means of guidelines, I could not extend the power of the commissioner; it would be illegal for me to do that. I cannot legally extend the power of the commissioner.

**Mr Sorbara:** You can make a change to the bill.

**Hon Mr Rae:** Yes, we can, and that is one of the reasons why the matter is before the committee, and I hope that the committee itself will be making recommendations that will allow us to draft legislation that I hope will make it very clear.

Mr Evans is here, and you will have a chance to question him after I have gone. I think it is fair to say that we are, not in daily contact, but certainly in regular contact—

**Mr Scott:** Oh, you will be in daily contact with him as things go on, I can assure you of that.

**Hon Mr Rae:** Thank you, Mr Scott.

We discuss regularly issues that involve matters of judgement. That relationship is one that I think again is all to the good and is one that I think needs to be clarified in the legislation. As I say, it is not something that I can do by means of the guidelines, but it is something that I think is appropriate.

The second kind of criticism which the guidelines received was some very specific criticisms from the critic for the Conservative Party, Mr Sterling. Those criticisms basically were that the guidelines which I had put forward were different from those put forward by Mr Davis and in particular that they treated the question of the activities of spouses and minor children differently, in particular, spouses. That is true. I think it is a basic question of value and of philosophy that I have to wrestle with, that cabinet has to wrestle with and indeed this committee, now that it is seized of this question, has to wrestle with as well. That is, I simply do not believe that in modern economies such as ours in 1991, or modern societies such as ours, it is possible to bind spouses in the way that Mr Davis may have thought it possible to do back in the early 1970s. It is not a question of its being too onerous. For me, it is a question of its simply being inappropriate. The rule there has been, and it is again a rule, I think, that was followed by the previous government and it is one which we have



put forward in the guidelines, that disclosure is appropriate, necessary and vital, but that there should be basically no additional requirements, except of course to make it clear there are situations and circumstances where that disclosure has to be acted on by a member of cabinet in indicating that he or she cannot participate in a cabinet decision because it might involve a potential conflict. As I say, that is an issue that the cabinet wrestles with. I am sure others have wrestled with it as well.

We also wrestled with the question of to what extent it is appropriate to bind other members of the family. There, I must confess, I find it very difficult to see how one can legitimately argue that brothers and sisters, cousins or others should be prevented from carrying on normally with business and indeed being involved in companies that contract with governments, as long, again, as that information is well known and as long as everyone understands it. Again, in the kind of society and economy that we live in, it is ludicrous for us to suggest that the entire extended family of a member of the Legislature, a member of cabinet, should not be able to participate in business or economic life, simply by virtue of the fact that one member of their family saw fit to enter public life.

I think that, all in all, we are trying to do a number of things. One is to constantly reassure the public that information is available, that people know what interests members of the Legislature have in an economic sense. We are trying to provide a degree of confidence to the public to which we feel that they are fully entitled and the public is fully entitled to it.

We are also trying to strike a balance between what is necessary and what needs to be done to establish very clearly the highest standards in terms of the integrity of government and the integrity of the political process.

We are also trying to be reasonable and practical in recognizing that there is a diversity of interests which people have and that those interests which people had prior to entering public life are perfectly legitimate. Where, for example, divestment is impossible or where it would cause great hardship to the individual or to their family, we would continue to provide for the principle of a trust which would be in place, which would not be directed by the member or indeed by the member's family, but which would be allowed to continue to operate. That is the principle that has been established.

There are a number of tricky issues which I am sure you are aware of and are going to ask me about, both in terms of individuals and in terms of hypothetical situations, which I would be glad to discuss with people. I can only assure you that I do not enter into this discussion with a sense of having any monopoly, either on virtue or on knowledge of the practical situations. I think it is important to say that the reason this committee was established was in order to allow members to participate fully in the discussion of how the law could usefully be reformed and how it could be better implemented and to get the views of members with respect to these questions.

I myself felt it was inappropriate for me to simply impose on members standards which had not been discussed with them or which they had not been involved in

discussing or involved in developing. At the same time, I think it is important that this process be done in a way in which the public sees there are a variety of interests which are being considered and a variety of experiences which are being drawn on in order to allow for better legislation. As I say, the legislation which we have goes a good way. I think it establishes some important principles. The guidelines which I have set down, I hope, will advance the debate a bit further. I think it is important for us to explore whether these standards need to be further made available to members, or whether it is simply a question of applying them to the executive council.

One other thing that I did that again has not been done before was to apply the guidelines to parliamentary assistants. I can tell you that this was not an easy decision to take. It was based on my view that, if you look at the future of parliaments, the work of parliamentary assistants is going to become more important rather than less important. Their involvement, for example, in our government in decisions of cabinet, cabinet committees and so on, is going to be even more the case, rather than less the case, and in that circumstance it seemed a natural thing for us to extend the application of the guidelines to parliamentary assistants.

As I indicated last week, because we are doing something new, the application of these guidelines to parliamentary assistants in particular has had to be extended until 31 March. I guess it is a combination of a practical change being introduced for parliamentary assistants and the fact that the economic situation in the province is such that to simply require divestment out of the blue would cause some difficulty for people and I thought it would be wise to extend the time until 31 March.

I have also made certain clarifications with respect to rental accommodation, registered retirement savings plans and mutual funds which again simply responded to the practicalities of the situation. If you have any questions about those, I would be glad to respond as clearly as I can to them, because I think it is important that that be done.

I am now in your hands and would be glad to answer any questions that I can. The only thing I would say to you, Mr Chairman, is that I do have some obligations to be at a cabinet committee meeting at 2:30 and if I could possibly be away before then I would appreciate it, but I am in the committee members' hands. They may not want to see me for that long, I do not know.

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**The Chair:** I do not think it is a major problem. That does create a small change in our agenda, but I notice that the Honourable Gregory Evans is with us. In any case I am sure you would be here for most of the Premier's address, sir. Perhaps we could start.

**Mr Sorbara:** Given our experience last week in disagreements in this committee over timing, I want to first express my surprise that the Premier wants now to leave at 2:30. Our understanding was that he was going to be here until 3. Can we come to some agreement now as to how we are going to divide up this time? My submission would be that, given that these are the Premier's guidelines and

that there has probably been a thorough discussion of them in his own caucus, the time available to us—that is, the hour and 10 minutes available to us—ought to be distributed between our party and the Progressive Conservatives. I am in your hands, Mr Chairman, and the hands of the committee, but I think we should deal with that now.

**The Chair:** I would certainly welcome the comments of the government caucus.

**Ms S. Murdock:** I certainly think we should have the opportunity, and I am almost positive I can expect comments—certainly from Mr Sorbara—that I would like to comment upon. I think, therefore, that all three parties should have the opportunity to question the Premier.

**Mrs Mathyssen:** I would like to concur with Ms Murdock and I would propose that there be an equal division of time between the three caucuses.

**The Chair:** There is a motion for equal division of time, Mr Sorbara.

**Mr Sorbara:** Whenever the government makes a proposal on this committee, Mr Chairman, they have the majority so I guess that is what it is going to be. How shall we proceed? Shall it be our party first and then the Tories and then the government, or what do you propose in that regard?

**The Chair:** I was going to suggest that. Go ahead, sir. I would also like to welcome Mr Scott and Mr Wood.

**Mr Scott:** Perhaps I can begin by asking a question of the Premier. Section 14 in the guidelines calls for a declaration of a conflict of interest in cabinet, and I take it that the Premier would have regarded that as appropriate with or without the guidelines and would have applied that since his first cabinet meeting in October. If a minister had a conflict, you would have expected that minister from the first meeting to stand up in cabinet and say, "I have a conflict; I own shares in this company we are talking about," or whatever it might have been.

**Hon Mr Rae:** Yes, that is correct.

**Mr Scott:** Have such declarations been made by any of your ministers—I am not asking for names or anything like that—since 1 October?

**Hon Mr Rae:** To my recollection, yes, there have been.

**Mr Scott:** Can you tell us approximately how many times?

**Hon Mr Rae:** Twice.

**Mr Scott:** When are you going to disclose those conflicts, as section 14 requires?

**Hon Mr Rae:** I will have to discuss that with the secretary of cabinet, but in terms of when that is to be done, as I would understand it, it should be done when a decision is made. And you must not hold me to the twice; it might be more than that in terms of individual decisions. Let me give you a couple of examples, Mr Scott, just so you can know, because sometimes raising the question raises questions in people's minds.

**Mr Scott:** I accept what the Premier says.

**Hon Mr Rae:** Rather than let hypothetical ghosts dance through the heads of people who are listening, let me give you a couple of practical examples. People, for example, whose extended family, sisters, uncles, brothers, fathers, may in their view—in my view, most cabinet ministers are excessively careful—may feel that there might be a conflict in a particular decision being made. You know the way cabinet works; you get 25 recommendations coming from the Ontario Development Corp and somebody says, "Wait a minute; maybe I should declare a conflict here"—

**Mr Scott:** Premier, if you will forgive me for interrupting, our time with you has now been cut down by half an hour. I am trying to keep my questions short; I would appreciate, in the tradition, that you might do so as well if possible.

**Hon Mr Rae:** I will do my best.

**Mr Scott:** I take it that it goes without saying that you will see to it that those decisions are communicated to the public as quickly as possible.

**Hon Mr Rae:** Yes, quite simply, as simply as I can, I would say that would be my intention.

**Mr Scott:** Under section 15 of the guidelines, ministers are required to divest themselves except where they satisfy you of a number of conclusions, in which case you can in effect waive the divestment. I am summarizing the effect of the section. Have any people applied to you to waive divestment under section 15 so far?

**Hon Mr Rae:** That is a discussion that is still ongoing. As I said to you, the deadline has been extended to 31 March. I would also say to you that I do not intend to take any decision with regard to a particular minister or parliamentary assistant without discussing it with Judge Evans.

**Mr Scott:** No. I understand that perfectly. I am simply asking not whether you have made a decision but whether applications have been made to you under that section by ministers or parliamentary assistants, or requests made orally.

**Hon Mr Rae:** I think we are at the stage right now, particularly with PAs, where there are some oral requests and some discussions that certain PAs are having. I have received nothing yet in writing, and obviously this will be done by means of correspondence being exchanged and then a discussion with Judge Evans with respect to a particular situation.

**Mr Scott:** So you have received no such requests.

**Hon Mr Rae:** I have received some, but I have made no decisions yet of a final nature and I have had no discussions yet with Judge Evans except of a very informal nature with regard to a number of situations which again arise simply as a matter of course.

**Mr Scott:** When you say you have received some requests, can you help us by saying whether that would be less than 10 or more than 10?

**Hon Mr Rae:** Yes, far less than 10.

**Mr Scott:** And would you like to tell the public the names of the ministers who have asked for this benefit?



**Hon Mr Rae:** Not yet because—you said it was ministers. It is not necessarily ministers; it is also parliamentary assistants.

**Mr Scott:** I see. Them too.

**Hon Mr Rae:** Some. But again there are situations that involve the interests that I think have already been disclosed to Judge Evans and that are there as a matter of record. But as I say, those decisions are not going to be made in a final form until 31 March. I think it would be better, and it would be my intention, to probably try to release all the decisions together as a package and present them to you and to the House for further discussion by 31 March.

**Mr Scott:** Two other matters, I hope very short. When the conflict-of-interest bill was debated, the theme of the bill was that conflicts, whether they be conflicts in the form of requiring disclosure or some other positive act, should be capable of being examined by an independent official; that is, an official independent of politicians like you and me. The purpose of that, as I understand it, was at least twofold; first of all, so that the public would have the sense that politicians were not making these decisions about who could do what, or who could own what, or who could join what organization, and so that the person accused of a conflict would also have access to an independent judge. That is why the act was passed in the form it is.

Why is it that these guidelines put all these powers in the hands of a politician, namely, the Premier? It is the Premier who can decide whether divestment is required. It is the Premier who can decide whether it goes into a blind trust under section 15. It is the Premier who decides whether there is a public interest at stake. It is the Premier who decides whether he is satisfied that there would be hardship.

There are several other sections in the guidelines which in effect give the Premier, as far as I can tell, almost the exclusive right to decide these things. When you decide that someone does not have to divest or someone does not have to declare a conflict, it seems to me that is going to be that, is it not?

1330

**Hon Mr Rae:** First of all, I think I made clear to Mr Scott in my opening statement—and this again is something I think needs to be debated by the committee; it is something on which I would be glad to have the advice of the committee, and I mean all the members of the committee; first of all, by means of the guidelines, I could not extend the power of the commissioner. I did not legally have the power to do that and it was the legal advice of the Ministry of the Attorney General, a ministry with which I am sure you are acquainted.

**Mr Scott:** I barely recollect it.

**Hon Mr Rae:** With moments of great fondness, I am sure. They reminded me of the fact that I could not by means of guidelines give the commissioner powers which he otherwise did not have.

Let me just say to you that this is something I want to hear from the committee about, with respect to it being the commissioner who would make judgements. Again, I will

leave with you the six-page letter that I wrote to Mr Aird where I indicated that I thought, with respect to the ongoing management of the trust, for example, that it would be thoroughly appropriate for the commissioner to have the power to review the management of a trust if there was any concern that he or she had that the trust was not being managed in an appropriate way. In terms of extending the powers of the commissioner, that would make me very happy if that is something that the committee wanted to do in terms of a new law. I did not feel I could simply bring in a new law without giving the committee the chance to discuss its implications.

But let me also say to you, however, that at a certain level these things all become political questions, and at a certain level the buck does stop with the Premier. At a certain point, my observation would be that there are situations where you are likely not to be satisfied and others are likely not to be satisfied with my or any Premier, not to personalize it, but indeed any Premier, saying, "Send that to the commissioner and let the commissioner decide."

There is also this question of political accountability and people needing to know what the rules are and being able to ask questions about it in the House. You may not agree with the response, you may not like the response, but at least there is a sense of political accountability. I guess what I am saying is that, sure, at a certain level, yes, I understand your model, the model that you introduced in your legislation.

**Mr Scott:** It is your model.

**Hon Mr Rae:** It is the model that we are all left with now, but I mean it is the model that you presented to the House. I can understand it and I see its logic and its merit. I also think there is a political reality that even with the working and the advice and the views of the conflicts commissioner, there are times and situations when an additional level of political accountability is necessary.

**Mr Scott:** Premier, you began by saying that you would like the commissioner to do all this, and then you went on to say "but however," a phrase that we are hearing quite a lot since 6 September. I just draw to your attention that when you were taxing the previous government about this in July 1986 there was not the slightest doubt that all this should be done in a court, that is what you were talking about, and in public so that the public could see what was being decided, not in the privacy of some Premier's office. What you said—

**Hon Mr Rae:** Nothing has been decided. I make decisions in various places, and the consequences of those decisions and the wording of those decisions and the meaning of those decisions is very public. It is a very public process.

**Mr Scott:** But do you not remember, Premier, when you used to tell us about Manitoba and Saskatchewan and how great they were under the NDP governments? July 1986, page 2123 of Hansard—I can just hear it now; I must have been there:

"Let us go back to this point. Is the Premier aware that there are at least two jurisdictions next door to us in this country, Manitoba and Saskatchewan, where this determination is

made in the courts? A determination is made after an application is made either by the voters or by a standing committee of the Legislature with respect to a violation. All the questions the Premier is unable to answer are answered by a court, and if the court finds there has been a violation, the individual found to be in violation is disqualified from running in the next election."

We are talking about conflicts or any of these things.

Will you recommend to your cabinet that these guidelines should be incorporated in legislation so that all these determinations can be made either by a judge or by the Conflict of Interest Commissioner?

**Hon Mr Rae:** I have no difficulty with that at all, Mr Scott, none at all.

**Mr Scott:** Good. Tell him to get the bill.

**Hon Mr Rae:** But let me say to you, since you have asked the question, if you look at the terms of reference of this committee—which were drawn up by all three parties but which I can assure you our party had something to do with and I did happen to see before they went out—we make it very clear that giving increased legal rights to citizens to apply, giving a legal capacity for citizens to get these things enforced, and to have these questions done in public, are things I am quite happy to do.

You can be implicitly critical of me for not bringing forward a piece of legislation, but since you have asked, let me say to you very directly, I think it would be far better for us to have this discussion, for us to have the views that are out there in the committee, and for us to have Judge Evans coming forward with his suggestions, which are very practical because he has seen into the affairs and into the realities of the life of every single member of this Legislature, before I suddenly bring forward a piece of legislation. I think that is a better approach.

**Mr Scott:** I think we are all grateful for that, Premier.

**The Chair:** I think Mr Sorbara was wanting to ask a question as well.

**Mr Scott:** Can I just follow one thing up if you will permit me? I am grateful for your view that this kind of guideline should be put in legislative form. I take it I also have it from you as part of that that the decisions that are now made under the guidelines by the Premier will be, under such legislation, made by an independent commissioner like the Chief Justice.

**Hon Mr Rae:** Sure, but let me also say to you—

**Mr Scott:** "Sure, but"?

**Hon Mr Rae:** No, "sure and" or "however" or "wherever" or "whatever." I know you are spending some of your time in courts these days, but this is not one of them.

**Mr Scott:** You were the one who said we should be in court on these things. That is what I am asking.

**Hon Mr Rae:** I say it right here. We establish here "the need to strengthen the investigatory powers of the commissioner, to establish a judicial proceeding for adjudicating conflicts, appropriate means for electors to initiate investigations of alleged conflict of interest." It is all here.

**Mr Scott:** Sure. I am with you.

**Hon Mr Rae:** That is exactly what we are suggesting, that this is what the committee should be seized of. I would like to hear the view of the committee and I would like to hear your views, because it seems to me there are times and occasions when, in opposition, you are going to want to say to the Premier, "It's all very well, don't tell us what the standards are in the law; tell us what your own standards are and tell us what you think should happen."

I suspect that, looking at members of the opposition, there is going to be the occasion when you are going to want to ask that question. And I do not think you are going to be satisfied with the answer that says: "Oh well, wait a minute now, we've got a committee looking into that. As soon as I hear back from the committee I'll get back to you." It has been my sense that at some point the buck also stops at the Premier's office and there has to be that understanding.

**Mr Scott:** I stand with the Bob Rae of 1986 on this issue.

**The Chair:** Greg Sorbara of 1991?

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**Mr Sorbara:** Premier, I was interested in your comments on my comments the day on which you introduced these guidelines. I was interested because at that time you did not refer to the fact that it was impossible to incorporate into these guidelines additional powers to the commissioner. What you did in the guidelines was simply put additional powers into your hands, and I understand your position today is at least somewhat qualified in that regard. When I listened to your introductory remarks, you said you thought it was important that information be available to the general public and to members and that there be confidence in the public. I would like to go over perhaps four or five cases where decisions of this type on government integrity have been made and the people who were really left in the dark were the public, and I would like to be able to give you an opportunity to comment on any or all of them.

First of all, in the case of Tony Rizzo, he was—I guess there is no nice way to put it—thrown out of your caucus based on allegations which were never aired in public or known to the public, but they had to do apparently with some sort of alleged criminality or quasi-criminality.

In the case of Dennis Drainville, who was convicted of a criminal offence, he was not asked to leave the caucus. In fact, apparently he was congratulated by you upon the actions that he had taken.

In the case of Anthony Perruzza, the member for Downsview, there were some press allegations that he had inappropriately used resources of the city of North York, and there seemed to be no consequences in that regard.

Now, two other cases which I think touch directly on the conflict-of-interest guidelines are these—perhaps I will let you comment on those and—

**Hon Mr Rae:** No. Keep going.

**Mr Sorbara:** Okay, maybe I will, because you never know when the Chairman is going to ring the bell and say, "Time is up."



**Hon Mr Rae:** I just want to have them all out on the table.

**Mr Sorbara:** In the case of the Minister of Colleges and Universities and the Minister of Transportation, there were suggestions on the last day of the House that inappropriate contact had been made with city of Hamilton NDP council members. On that day, in fact, in question period you said you had made inquiries sufficient to satisfy yourself that a mistake had been made, but the mistake was not fatal. Could you tell the committee what inquiries you made and the extent to which you asked others to do an independent inquiry before you made the political decision that there should be no consequences to the discussions had by the Minister of Transportation and the Minister of Colleges and Universities?

Finally, in the case of the Minister of Community and Social Services, a few days ago in a scrum you suggested that her letter to the city of Toronto, in fact intervening in a hearing which was currently before the city of Toronto, was a mistake. But apparently you had made sufficient inquiries to determine, I guess individually or in counsel with your advisers, that the mistake was not sufficiently serious such that there should be consequences for her interventions there.

I point out to you that the city of Toronto was undertaking a quasi-judicial hearing in considering an application by St Michael's College for a change in land use, and I point out to you as well that the city of Toronto, basing its information on the fact than an inquiry was made by a minister who was responsible largely for its social service funding, agreed, without representation from the University of Toronto or St Michael's College, to defer its decision.

My problem in all of these cases is that, from a Premier who has claimed that it is important for the public to know, who demanded inquiry upon inquiry when he was the Leader of the Opposition, in none of these cases has there been even the semblance of some sort of public disclosure about what actually happened. In some cases there have been consequences: Rizzo. In some cases there have not been consequences: Richard Allen, Ed Philip, Zanana Akande and, of course, Dennis Drainville. Can you tell us what inquiries you made in each of those cases and the basis upon which you decide when there shall be consequences and when there shall be no consequences?

**The Chair:** I suspect the answer will take almost as long as the question, so I—

**Hon Mr Rae:** No. The answer will be fairly brief. I will try to keep it brief.

**The Chair:** Fine.

**Hon Mr Rae:** But first of all, Mr Sorbara, you have used the words "alleged criminality or quasi-criminality" with respect to Mr Rizzo. You have used those words. I would not use them. You have used them. Okay? I just want to make that clear. Those are your words, no one else's.

The situation with Mr Rizzo and his membership in our caucus had to do with a matter that had been before the Ontario Labour Relations Board, which is again a public

body which made a public decision with respect to companies of which Mr Rizzo was the owner, and the fact that it had been in violation of the Labour Relations Act with respect to—

**Mr Sorbara:** That has happened to a lot of companies in the history of the labour board.

**Hon Mr Rae:** I am just saying to you, that is the extent of the situation. Mr Rizzo made a decision with respect to withdrawing from the caucus because, frankly, I had not had any knowledge of any of these difficulties at any time and I think Mr Rizzo felt that—

**Mr Sorbara:** If he were a matter of public record—in fact, you nominated Tony Rizzo, did you not, at his nomination meeting?

**Hon Mr Rae:** There were many things to be a matter of—no, I did not nominate him. I was at the meeting, as leaders are often at many different political meetings. But again, in answer to that particular allegation of yours, no, that is not correct either.

**Mr Scott:** Okay, so he broke the Labour Relations Act. Tell us about breaking the Criminal Code.

**Hon Mr Rae:** Wait a minute. No. Mr Scott, you have made a comment on the record which you can make which I am simply going to leave without comment.

Mr Rizzo made a political decision with respect to his membership in our caucus, and in my view that is the beginning and the end of it. I felt as leader that I had been let down because I had not been aware of any of these situations, and Mr Rizzo made a judgement with respect to his participation in the caucus. I think it is also known to you and it is known to everyone that there have been a number of inquiries into the city of York which are being completed. Mr Rizzo, I think, felt that until those inquiries were completed and everything was over it would be better for him to stay out of our caucus. That was a political judgement on his part. It had nothing to do with conflict legislation. It had nothing to do with—

**Mr Sorbara:** It has to do with integrity.

**Hon Mr Rae:** It had to do with his sense of his relationship with our caucus and with where we are.

With respect to Mr Drainville, his conviction was because of his convictions, because of his being on the Red Squirrel Road; he was there as a matter of conscience. He was charged, he was tried, he was found guilty and he has been sentenced. That is all a matter of record. I do not think anything of which he has been convicted—and again this is the judgement I make, for which some will criticize me and others will not—speaks to or shows a defective character. What he has done he has paid a price for, and frankly, I think it would be inappropriate for me as leader to—he has been elected to a position of responsibility in our caucus and presumably it will be up—

**Mr Sorbara:** He is the chairman of caucus, is he not?

**Hon Mr Rae:** The chairman of our caucus, and it will be up to our caucus to determine whether he is re-elected when he next stands for office. Again, that is a matter that—

**Mr Sorbara:** You make those decisions.

**Hon Mr Rae:** No, I do not make those decisions.

**Mr Sorbara:** Are there other criminal offences which would disqualify him from being the chairman of your caucus?

**Hon Mr Rae:** Are you alleging so?

**Mr Sorbara:** No. I am just asking, because you make those decisions.

**Hon Mr Rae:** Oh, you are just asking. I see. I am not going to dignify that particular question with an answer.

**Mr Sorbara:** No, but—

**Hon Mr Rae:** Simply go on, Mr Sorbara, since you have made another set of accusations. I want to just respond to them. You have said there were press allegations with respect to Mr Perruzza.

**Mr Sorbara:** There were allegations in the press.

**Hon Mr Rae:** In the press, that is true.

**The Chair:** Mr Rae, were you wishing to continue with this?

**Hon Mr Rae:** I am just responding to these ones as I can. Again, Mr Sorbara, I can only say to you that there are a lot of allegations in the press at various times on various people. Mr Perruzza used some stationery, the stationery of the municipality for which he was elected. An allegation was made that this was inappropriate. I think there were future stories which showed there was nothing unusual or untoward in any way in what had happened.

With respect to the conduct of the Minister of Colleges and Universities and the Minister of Transportation, there was a very lively political conflict in the House the last day of the session before Christmas. Frankly, I did not hear any evidence of any conduct that would bring a member into conflict with either the Legislative Assembly Act or the conflict act.

**Mr Sorbara:** There was some allegation in respect of the oath of a cabinet minister.

**Hon Mr Rae:** Yes. We had that discussion. I would be happy to go through that again with you, and I said again—

**Mr Sorbara:** But what I ask here is, what inquiries did you make? What investigations did you make?

**Hon Mr Rae:** Inquiries that I made were the ones that one would normally make. I spoke to the ministers in question.

**Mr Sorbara:** And?

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**Hon Mr Rae:** I spoke to them very thoroughly with respect to what they say happened. I spoke to other members from Hamilton who were alleged to have been involved and discussed it with them and satisfied myself that a political error of judgement had been made, which was admitted to by the minister. I also discussed it with the mayor of Hamilton and with the regional chairman, both of whom said that while they were not happy with the decision with respect to the Red Hill Creek Expressway, they had nothing at all to complain about with respect to the conduct of the two ministers in question in terms of

their integrity or in terms of their dealings with them. And that satisfied me.

While there were certainly grounds for a lively discussion in the House, which there will be on many occasions and indeed in this committee, we are not talking about anything that could be said to resemble a conflict. With respect to the Minister of Community and Social Services, what I said to the minister was—and again, what inquiry did I make? I spoke to the minister very directly, and what she told me was—

**Mr Sorbara:** Her interest would be in defending herself, would it not?

**Hon Mr Rae:** Mr Sorbara, we do these things quite publicly. These things are subject to public scrutiny and public accountability. What I said was, I do not think there is anything wrong with individual members of the Legislature—and maybe you do—writing a letter on behalf of their constituents. What is inappropriate, and the guidelines state this quite clearly—

**Mr Sorbara:** Oh, clearly, and the guidelines were violated.

**Hon Mr Rae:** Well, you say they were violated.

**Mr Sorbara:** They are your guidelines and the fact situations are clear.

**The Chair:** Mr Sorbara, we have run out of time.

**Hon Mr Rae:** I would say to you that it is my judgement that they were not, that what was inappropriate was not making it clear that one was writing as a member of the Legislature rather than simply as a member of cabinet, and those are distinctions that need to be made.

**Mr Sorbara:** Are you of the opinion, then, that a cabinet minister can separate himself or herself from the cabinet—

**Hon Mr Rae:** I am of the view, Mr Sorbara, that when you join the cabinet, you should not suddenly be prevented from dealing normally with your constituents. I am the Premier—

**Mr Sorbara:** Did you respect those views during the last Parliament?

**Hon Mr Rae:** I have constituency hours as you do—

**Mr Sorbara:** Sure you do; as I do and I did.

**Hon Mr Rae:** And as other members do. If I could just complete, Mr Chairman, I have constituency hours and I think it is fair game for me to be able to make representations on behalf of constituents as long as it is very clear, as long as it is clear in the guidelines.

**Mr Sorbara:** All I can tell you is you are going to have a lot more problems of the kind you have identified today.

**Hon Mr Rae:** I would like to hear your suggestions as to what—

**Mr Sorbara:** My suggestions are, with respect, Mr Chairman, that a cabinet minister can never shed the robes that he or she wears as a cabinet minister no matter what stationery he or she writes a letter on. You cannot do that. When you write a letter on behalf of your constituents,



everyone knows that Bob Rae is the Premier of Ontario even if you put it on blank letterhead.

**Hon Mr Rae:** I understand that. But are you saying, therefore, that there is no circumstance in which members of cabinet can make representations on behalf of their constituents?

**Mr Sorbara:** I am saying that I believe there are no circumstances in a quasi-judicial hearing where a minister who is the source of major funding for that very body can make an intervention, particularly when the other parties to the hearing are not even advised that the intervention is going to be made. It was you who said there has to be consequences to these things, and as of yet we have had no inquiry. It was you, as a result of allegations in the press during the last Parliament, who demanded public inquiries and we have had a number of situations here where there has been no public inquiry, no public consideration of the evidence.

**Mr Scott:** I want the old Premier back.

**Hon Mr Rae:** I am not surprised you want the old Premier back in.

**Mr Scott:** If I cannot get the 1986 Premier back, I want Bob Rae from 1986 to come back.

**The Chair:** With due respect, Premier, while I appreciate your desire to dialogue with Mr Sorbara, the Conservative Party should also have an opportunity to pose questions.

**Mr Harnick:** Premier, the guidelines do not in any respect deal with the public service, and I am specifically speaking of the level of deputy minister.

**Hon Mr Rae:** Right. They do not.

**Mr Harnick:** It is a concern to me because deputy ministers are nameless, faceless people in so far as the public is concerned. I do not know this, because I have never been there, but they also are probably privy to more information than a minister, or certainly than a parliamentary assistant. Your guidelines do not deal with it. How do you intend to rectify that?

**Hon Mr Rae:** Mr Harnick, it is a very good question and a very direct question and I will answer it as directly as I can. We are going to be introducing appropriate codes of conduct and amendments to the Public Service Act with respect to deputies and other senior appointees. It is our view, as I think I said in my statement, that because they are all crown employees, as are ministers' confidential staff, it would be more appropriate for that to be dealt with under the Public Service Act. But you are quite right when you say that this is an area that has been unexamined and unexplored for a while and that it is important for us to explore it.

Having said that, I want to say on the record that while you have described them as nameless, faceless people, they are not to me any more, since they are people whom I have gotten to know and who work on behalf of all the public. As you get to know them and as others do, you will see that they are very talented, dedicated people of tremendous integrity. And I do not want to—

**Mr Sorbara:** They have just become so since 6 September.

**Hon Mr Rae:** No, that is not true. I felt that way about most of them before that.

**Mr Sorbara:** They always spoke highly of you, Bob.

**Mr Harnick:** Will you ensure that when the Public Service Act is amended, the necessity for disclosure and divestiture by those individuals will be made?

**Hon Mr Rae:** Yes.

**Mr Harnick:** Just to deal with section 14 of your guidelines, let me pose a hypothetical to you.

**Hon Mr Rae:** Oh oh.

**Mr Harnick:** Probably not a good one, but—

**Hon Mr Rae:** No, but that is just very risky to get into.

**Mr Harnick:** Let's say a minister declares a conflict of interest at a cabinet meeting, indicating something to the effect, "All my money is tied up in company X, or my wife's money is tied up in company X, and therefore I cannot be involved in this decision, but the ramifications of dealing with this in a particular way are going to hurt me very badly." Once that disclosure is made in front of the full cabinet, assuming their colleagues and friends do not want to hurt this individual, how can you then go ahead and proceed as if there is no conflict of interest? I think the whole mechanism set out in section 14 is suspect.

**Hon Mr Rae:** Okay. How would you do it?

**Mr Harnick:** I do not know if the disclosure should be made to the whole cabinet. Maybe the disclosure should be made only to the Premier or to the commissioner, because the rest of the cabinet still has to determine what they are going to do with that issue.

**Hon Mr Rae:** I see. What you are saying is—try to imagine a situation—there are situations with respect to appointments and there are situations with respect to order-in-council discussions and there are decisions that are made, for example, not of a routine nature. Let us say the Ontario Development Corp is making a whole bunch of different loans; it is usually not ministers being involved but it is usually sometimes saying "Well, I have some connection with that" or whatever. You are saying that rather than have that made before the whole cabinet, you would rather the minister simply not take part in that discussion or not be there.

**Mr Harnick:** It may well be that because of the individual's particular circumstances, the rest of the cabinet may feel inclined, subconsciously or otherwise, to protect that individual once he discloses what his problem is in view of the full cabinet. He may then withdraw, but the rest of the cabinet may say, "Boy, we had better look after our colleague; he could be in real trouble here." In a sense, although he has disclosed and he has complied with what section 14 says, there is great abuse possible, only because his friends and colleagues do not want to hurt him.

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**Hon Mr Rae:** I do not want to denigrate the hypothetical at all, but I just say to you that, first of all, members'

interests are public. For example, the range of shares that a member owns is something that is publicly available. I have just been reminded by Mr Shipley, who is working with the Ministry of the Attorney General, that under the Members' Conflict of Interest Act, you are required to make a declaration. All we are doing, for the first time, is in a sense breaking cabinet traditions by making it public so that after the decision has been made, it will be said that the Premier declared a conflict for whatever reason, or somebody else declared a conflict, then you will all ask questions and press will ask questions as to what that was about. It is so the public will understand—

**Mr Sorbara:** It's at that point we get stonewalled.

**Hon Mr Rae:** Why? How? No, I do not know how else we would do it, Charles. You have to make the declaration. I do not know how you avoid the problem. If you really think the cabinet sits around and says, "How can we help old Joe or Alice with this one because it is going to help them out?" I mean, that really is not the criterion. In fact, people are so worried about the appearance of a conflict that you make every effort to go the other direction because you know that it is going to look terrible if it appears that you are simply rewarding somebody or somebody's friend.

**Mr Harnick:** All I point out, though, is that you can comply with the wording of the section but the abuse can still remain. You are exonerated because you complied with the wording.

**Hon Mr Rae:** Let's face it, there is a legal issue here and there are technical requirements, and then there is the basic political rule that if it looks bad and sounds bad, you are going to get criticized for it anyway. Ultimately, the public makes a judgement call as to how bad that really is, depending on the allegation and the merits of the allegation. You cannot stop the alligators—like Mr Sorbara, for example. You know, the alligators, like Mr Sorbara and others, who make these allegations. You cannot stop those alligators.

**Mr Harnick:** That is what happens when you are—

**Mr Sorbara:** Excuse me, Mr Chairman, while I file my teeth.

**Mr Harnick:** When you are here for five years you get like that.

**Mr Sorbara:** Can I do that in public?

**Mr Harnick:** Premier, one last item following up from one of Mr Scott's questions. He pointed out that you felt strongly at one point in your life about making sure there is access to the court system as there is in other provinces. Now, we have the opportunity to examine you here today. We may not have that opportunity again. You have told us to go ahead and make recommendations. My party wants to see what you people think should be in the next bill. If we recommend that access to the court system be available, will you give us your assurance that it will in fact find its way into the bill?

**Mr Scott:** He has already done that. Be careful, he may change his mind.

**Mr Harnick:** I am not so sure he did that.

**Mr Scott:** Oh, I think he did it.

**Hon Mr Rae:** Charles, let me be very clear. I suggested, for example, that instead of having a conflicts commissioner we should give it all over to the Commission on Election Finances. That is obviously not my view today. But for matters of historical record, I would be happy to leave with you the letter I wrote in August 1986 to Mr Aird and say to you that not only do I have no problem, I think it is entirely appropriate that if somebody, as a private citizen, wants to challenge or make a particular allegation and has the evidence to back it up and wants to proceed beyond the conflicts commissioner, that is something I would have no difficulty in supporting, if that is the direction people wanted to go.

**Mr Harnick:** Thank you.

**Mr Carr:** I want to go back to something that was mentioned earlier and has been brought up; I refer to the purpose of the guidelines, which is to increase the public confidence in the integrity of the government. The situation of Mr Drainville has been brought up and I was wondering how you reconcile that situation, having been in cabinet. How can you, for want of a better word, okay what he did and yet at the same time introduce this legislation which will increase the public confidence in the integrity of the government? I am having a little bit of difficulty understanding how you can reconcile those two, and I was wondering if you could go over it again for us.

**Hon Mr Rae:** I am sure everyone here knows as a matter of record my own involvement with this issue.

**Mr Scott:** That is not the reason, is it?

**Hon Mr Rae:** No, it is not. But I might as well get it out—

**Mr Scott:** I am delighted to hear that; I was very nervous for a minute.

**Hon Mr Rae:** Since you and others are in the room, I might as well have it all out so we can all have all the facts out on the table and nothing is being said implicitly that should not be said explicitly.

**Mr Scott:** You did the same as Dennis, that is it.

**Hon Mr Rae:** I refer to the conflict over the Red Squirrel Road, which by the way the previous government decided not to proceed with in its wisdom, after there were several hundred arrests on the Red Squirrel Road. Mr. Drainville, prior to his being a member of the Legislature, was involved in being on the road.

**Mr Scott:** Worse for a member of the Legislature.

**Hon Mr Rae:** And, I guess, you make your judgement. He took a position which resulted in a criminal charge and he was convicted. The question is, is there a difference between that and other infractions of the Criminal Code? Is there a difference between an act of civil disobedience which one individual decides to do, knowing that there are going to be consequences, and committing fraud or theft or an act that would be described as one of moral turpitude, which I think would be the sort of formal or legal expression? I think there is; I think there is a distinction. My own judgement would be that it would be a mistake not to see the distinction. But I am prepared to



take criticism and to accept the fact there will be people who will disagree.

**Mr Carr:** Let me use a hypothetical situation. If somebody was to rob a bank, but did it in terms of giving money to the poor, would that be one of conscience where you would allow that?

**Hon Mr Rae:** I do not think we have to deal with hypotheticals, Mr Carr.

**Mr Carr:** It is the same type of situation which you break the law or you do not, in my mind. It is obviously not in yours.

**Hon Mr Rae:** We have the difficult situations in front of us. What is your suggestion with respect to individuals who are faced with this situation? Are you saying that people—

**Mr Carr:** What I am saying is, if the purpose is to have public confidence in the integrity of government when you have people who break the law—and I am not talking about charges; I am talking about after conviction—and then you have a Premier who says, “That’s okay, because maybe that law was meant to be broken,” is it one of conscience if you rob a bank but then give it to the poor? I am having trouble following your—

**Hon Mr Rae:** No, I am saying that Mr Drainville is a parliamentary assistant. He is somebody who was elected to be the chairman of caucus. I think what happened to him and the decisions that he made and the reasons for him making those decisions are well known. I have made a judgement that this was not in any sense an act of dishonesty or anything of that nature in terms of what he did. He did what he did along with a number of other people because he felt it was the right thing to do and was prepared to take the consequences for doing so.

**Mr Carr:** I guess what I am saying is that you are talking about the purpose of the law being to increasing public confidence in the integrity and yet—

**Hon Mr Rae:** I do not think that anything Mr Drainville has done has decreased the confidence of the public in the integrity of this government or the integrity of government generally. I do not really believe that.

**Mr Carr:** I guess we would disagree. I will jump to another question, then—maybe there is time for Charles—and it deals with the case of Mr. Mackenzie and Mr Philip. One of the fundamental principles you have in there is, “Ministers shall at all times act in a manner that will bear the closest public scrutiny.” In that situation you have a man like Mr Hinkley, who says one thing, and the minister says the other, and you say, “Okay, I believe the ministers.” Yet when we wanted to have an open forum like this where we could call witnesses and ask them questions, you, for want of a better word, put the kibosh on it. I was wondering how you can say, under the fundamental principles, that the ministers will act in a manner that will bear the closest public scrutiny and yet when it gets down to it, you will not have any public inquiries where we can get to scrutinize some of the ministers. What do you say to the public about that?

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**Hon Mr Rae:** I think the public, on a daily basis and on a regular basis, does have an opportunity to judge and to make up its mind with respect to the conduct of ministers. If I can just say so with respect to another matter—I think you were referring to Mr Philip and to Mr Allen—it is a judgement that premiers make and for which premiers are either praised or criticized, depending on who is doing the praising or the criticizing, and that is the reality. We take these knocks on a daily basis. It was my judgement that they made a mistake; that in terms of the public scrutiny, the manner in which they discussed this after the cabinet decision was not terrific. I have said this to them. But again, I did not regard it as a capital offence. I did not regard it as a fundamental conflict. Despite the questions that were put to us in the Legislature and the vague kinds of statements made in the Legislature by some in the opposition, there is no evidence that I have seen of any kind that anybody benefited in any financial sense certainly, or indeed, one could argue, even in any political sense.

**Mr Carr:** Definitely not, and I want to apologize for saying “Mr Mackenzie.” Of course it was Mr Allen, as you well know, so I apologize, thinking it had been in the Hamilton area. But what I am getting at is that here you come in with the legislation to build confidence in the integrity of the government when in fact your very actions are not doing that. In fact, we could probably go even further by the backtracking on the Agenda for People by saying, how can there be integrity when people make promises to win elections and then have to backtrack on them?

**Hon Mr Rae:** Again, let’s separate out the politics of this from the—

**Mr Carr:** No, but integrity does not get split out like that. Integrity is there.

**Hon Mr Rae:** I agree. All I can tell you is that the people will judge us, and on a daily basis, with respect to our overall integrity. We will share views back and forth as to how well we are doing or how badly we are doing in completing our election commitments and other commitments we have made to the people of the province. that is a test you meet every day.

All I am saying is that every time somebody makes a mistake I think there has to be a judgement made as to how serious that mistake is, or if somebody does something that, for example, happened to Mr Drainville, the Premier and others have to make judgements as to whether or not this is something that is sufficient to cause a resignation or something of that kind. That is a judgement call you make.

**Mr Carr:** But, you see, I believed you when you said in the throne speech that while we make mistakes we all admit them—

**Hon Mr Rae:** And we have admitted them. If I can be very direct with you, I think we have admitted them as clearly as we possibly can. I have been very clear in admitting my mistakes.

**Mr Carr:** But the minister stayed. We are admitting that the minister is still there; the minister stayed in the case of the Hamilton situation, Red Hill Creek. We admit the mistakes.

**Hon Mr Rae:** Yes.

**Mr Carr:** The integrity of the whole system by situations like that—

**Hon Mr Rae:** I do not think that every mistake that a cabinet minister makes should lead to the equivalent of capital punishment in terms of leaving the cabinet.

**Mr Carr:** What I am saying is that if your job is to influence the public confidence and integrity of the government like you have said you have done, when you let incidents like this go out, the Drainville situation and the situation with Red Hill Creek, then you lose the credibility for everyone—not just for yourself but for all politicians.

**Hon Mr Rae:** We will see. When we all make judgements on a daily basis about our lives, about our families, about our kids, in terms of trying to make judgements about standards and conduct, not every mistake we make as individuals is a huge one. Some of them are small ones. All of them are worth admitting. I would just disagree with you when you say that every time something happens this somehow casts a pall over the entire integrity process. I do not agree with you.

**Mr Carr:** It does. As a matter of fact, when I go out to the people—

**Hon Mr Rae:** I think it depends on how we respond.

**Mr Carr:** When you backtrack on your promises, you know what the people do; they blame all of us. They say, "All you politicians, you all make promises"—

**Hon Mr Rae:** Mr Carr, if I am causing you difficulties in your riding, I am sorry. I would be glad to come down and talk to your people and try to explain to them how we are doing. I am sorry if I am causing you difficulties politically.

**Mr Carr:** I will keep you to that, Premier.

**Hon Mr Rae:** The last thing I would want to do is cause you difficulties in your own constituency.

**Mr Fletcher:** I have just one question. Do you believe the conflict-of-interest guidelines should extend to all members of the Legislature, and if so, why?

**Hon Mr Rae:** Well—

**Mr Scott:** Did you hear him sigh? That may be your parliamentary assistantship. When a Premier sighs like that you are in serious trouble.

**Mr Fletcher:** I have been in trouble since the day I got here.

**Hon Mr Rae:** Derek, in answer directly to your question, I think additional guidelines should apply to all members. I am not persuaded that complete divestment rules, for example, could or should reasonably be expected to apply to all members of the Legislature. I think that would be unduly difficult and an undue imposition of duties on a member of the Legislature. At the same time I do think, for example, the phrase "private interest" needs to be clarified, and I think some of the restrictions on acceptance of gifts

and benefits and so on need to be made clearer. I think the principle of more frequent disclosure is the issue on which I would like to hear from the committee—and again it is something that members need to express themselves frankly on—as to whether the commissioner should be expected to make public even more information that he receives. As you all know, the commissioner receives a lot of information and then he issues statements about categories with respect to what members' interests are, but he does not have to disclose amounts or even ranges of amounts.

Those are things that I think need to be tackled again by the committee, and I would like to hear from the committee on those views, because I think they are very important to hear from people on.

**Mrs Mathysen:** Premier, in part D of your suggestions to the members of this committee you suggest a need to strengthen regulations on activities of members after leaving office. Once a member leaves public life, I suppose he or she would be ostensibly a free agent. I was wondering, to what situation could this particular clause relate, and how did you anticipate regulating the activities of former ministers, PAs and MPPs?

**Hon Mr Rae:** Principally I was thinking of former members of the executive council, of former cabinet ministers. Section 18 of the current act sets out the principle that there is a 12-month expiry period during which activities of former cabinet ministers or members of the executive council are limited. We also have the issue which deals with the Public Service Act, which I think it would be also appropriate for members to think about, and that is the question of former deputy ministers who very quickly can become involved in the very industries which they were regulating, and it is a problem.

Having said it is a problem, the answers are not that easy to find, because you can put a quarantine period on of a year or you can extend it for two, but obviously the thing you are trying to avoid is a situation where, in anticipation of a future benefit, people's decisions are influenced in some way. It is a situation that is easier to describe than it is to figure out what law you can have that will deal with it. Whether it should also apply to members of the Legislature or not, I do not know. My own view would be that this is pretty onerous, and it would be pretty hard to make a rule like that really work or stick. But that is the kind of situation I was thinking of.

1420

**Mr Morrow:** First of all, Premier, I would like to thank you for coming here to sit with us for this hour and a half.

**Hon Mr Rae:** It has been a pleasure.

**Mr Morrow:** A very brief question: What type of investments can cause conflicts?

**Hon Mr Rae:** The origin of the conflict legislation in this province was, I think everyone knows, land dealings by cabinet ministers which became publicized after they were disclosed. This is before there were any requirements on the creation of trusts or anything else, and obviously decisions of cabinet in respect to zoning and land development



and things of that kind have a real impact. So that is one area.

The view has been that as much as possible one should be hoping that private business dealings or private business ownership or corporate ownership can create situations in which there is the potential for conflict. One only has to read the newspapers to understand what this potential is in terms of the perception that there is a mix between public and private business. Whenever there is a sense of a mix between public and private business the concern is that one is using public office to advance a private interest.

I would urge the committee to call on Eldon Bennett, who has been very much involved with Mr Aird in bringing forward his recommendations. I would urge the committee to talk to Mr Bennett, not because he agrees with my views but because he is somebody whose views I have come to respect a great deal. He has made it very clear that the question of a private interest cannot realistically be restricted only to the question of economic benefit; it extends beyond that.

**Mr Sorbara:** I just want to ask the Premier whether he has ever owned a business.

**Hon Mr Rae:** No. I think my economic circumstances are well known.

**Mr Sorbara:** It is okay. I just want to know whether you have ever owned a business.

**Hon Mr Rae:** Not.

**Mr Sorbara:** In your practice of law, did you ever act for clients who bought or sold a business?

**Hon Mr Rae:** Yes.

**Mr Sorbara:** Was that a big part of your practice?

**Hon Mr Rae:** No.

**Mr Sorbara:** So how many businesses have you been involved in from the perspective of a lawyer, acting for a seller or a buyer?

**Hon Mr Rae:** Oh, a few. I cannot give you a list, but—

**Mr Sorbara:** Do you know what a shotgun clause is in an agreement of purchase and sale or in an agreement as between shareholders?

**Hon Mr Rae:** Yes.

**Mr Sorbara:** Could you explain to the committee what a shotgun clause is?

**Hon Mr Rae:** When someone has to sell to someone else or someone is required to sell to someone else, that is the term of a partnership or the term of a shareholder agreement; something of that kind.

**Mr Sorbara:** It is close. That is sort of a B-minus answer.

**Hon Mr Rae:** Oh, I am sorry.

**Mr Sorbara:** It is. A shotgun clause is a very—

**Mr Harnick:** He still passed the bar exam. It does not matter.

**Mr Sorbara:** Under your guidelines, at least until we have different guidelines or legislation, you would make the decision about whether or not a minister would have to

sell his or her business. Let's say a minister said to you: "Premier, there is a shotgun clause in my agreement with my partner. I only own 49% of the business and if I have to trigger that shotgun clause, I have to suffer a loss of, let's say, \$100,000, because he can set the price." You have to make a decision under those circumstances. What would you do?

**Hon Mr Rae:** I would be guided first of all by two things: the wording of section 15, which I think you might have a look at—

**Mr Sorbara:** Yes, I have read section 15.

**Hon Mr Rae:** —which says they are required to divest "except where the minister satisfies the Premier that the interest has been fully disclosed, that undue hardship would be created by divestment, that retaining the interest is not inconsistent with the public interest and that the minister has given appropriate undertakings to avoid a conflict in respect of the interest." I know what I am saying, so my answer to your question—

**Mr Sorbara:** I am putting a hypothetical situation to you.

**Hon Mr Rae:** My answer to your question would be that this is precisely the reason why we have the exception clause. The reason we have exceptions is precisely in order to avoid the kinds of hardship you are describing.

**Mr Sorbara:** Okay. Does this constitute an exception, then? Your minister, whom you very much want to have in the cabinet—

**Hon Mr Rae:** I am not going to answer that on the basis of a hypothetical, because I would have to take a number of other considerations into account.

**Mr Sorbara:** Like what, for example?

**Hon Mr Rae:** All the other circumstances surrounding the case.

I would also be relying on the advice of the conflict commissioner with respect to the fairness of the—

**Mr Sorbara:** Hold on a second. The guidelines say you make that decision.

**Hon Mr Rae:** I have also made it—

**Mr Sorbara:** Name me three other circumstances that would impact on your decision.

**Hon Mr Rae:** No. I think I have answered you as clearly as I can.

**Mr Sorbara:** You are not saying anything, with respect.

**Hon Mr Rae:** I am. I am saying that the reason we have exceptions and exemptions is in order to deal with situations of that kind. I do not think it is terribly helpful to get into a whole bunch of hypotheticals. What other kinds of situations was I thinking of? Not only situations of that kind, which would be one potential; other ones would be where, for example, because of a total change in market circumstances, to require somebody to sell at a certain point would mean the person would suffer an enormous loss.

**Mr Sorbara:** What is an enormous loss? How much does it cost to be in your cabinet? How much?

**Hon Mr Rae:** You should ask some of my cabinet ministers. I do not know.

**Mr Sorbara:** But you have said publicly that most of your cabinet ministers do not own any assets. I am asking you, how much does it cost to be in your cabinet? For example, if a potential minister had to experience a 20% loss in the value of his assets, is that too much? Is that undue hardship?

**Hon Mr Rae:** Mr Sorbara, let me answer you very directly. You say, "How much does it cost to get in your cabinet?"—

**Mr Sorbara:** No; one would suffer a loss if the market conditions were bad.

**Hon Mr Rae:** There are many other situations where I can describe people as suffering losses from going into public life generally.

**Mr Sorbara:** There is no doubt about that.

**Hon Mr Rae:** Most of the lawyers in the Legislature who are not practising law privately—

**Mr Sorbara:** Yes, we are all making less than we would outside. I agree.

**Hon Mr Rae:**—and most of the doctors and a great many in the professions, a great many people in business.

**Mr Sorbara:** I hear you, but I am talking about your guidelines. You have to make a decision as to whether or not it represents undue hardship. If a minister says to you, "I'm going to lose about 20% of my net worth," what would your decision be?

**Hon Mr Rae:** I do not think I can answer on that kind of level except to say that—

**Mr Sorbara:** That is what the minister is going to come to you and suggest.

**Hon Mr Rae:** That is right, but I mean—

**The Chair:** Mr Sorbara, you were able to treat witnesses last week with some respect.

**Hon Mr Rae:** I will just say very directly to Mr Sorbara that where that kind of situation exists and where there is a feeling that this would work an unusual or undue hardship, that is precisely the situation where you would create the exception with all the rules that are there. You will be in a position to make that judgement, along with others—

**Mr Sorbara:** In about four years.

**Hon Mr Rae:** It may even be sooner than that; anything is possible in that regard.

**Mr Scott:** The Premier will have to leave us soon and I just wonder if I could follow up a question that Mr Carr raised before he goes, because the Drainville case is a very troublesome case for a number of us. I am entirely sympathetic to what the Premier says about the difference in cases, and there is also some recognition in our law that even if you have sinned you have not sinned for ever; you do not pay the price for ever. The Premier says you have to look at the motivation and there will be differences of opinion. The Premier's opinion, which I respect, is different than the trial judge's, because the trial judge concluded this was sufficiently contumacious to require an imprison-

ment. There is an appeal, so we should all bear that in mind, to be fair to Mr Drainville.

But would the Premier agree, as a matter of principle and perception at this stage, that should this appeal not succeed and should a sentence of imprisonment result, that it would not be possible, for example, for Mr Drainville, wherever else he may serve, to become the Attorney General or the Solicitor General of the province or a parliamentary assistant to either of them?

**Hon Mr Rae:** I think you are putting an impossible question to me, Mr Scott, because there are several levels of hypotheses. First of all, as you have quite rightly pointed out, the issue of sentencing is now being appealed. Second, I think I would have to reflect on that quite seriously and look at it in all of its consequences before being able to answer. I cannot give you a quick, short answer.

**Mr Scott:** There are lots of other cabinet jobs, Premier. I just think, consistent with Mr Carr's concern, that it would be a matter of very great confidence to the public to know that a contumacious breach of the Criminal Code, while it might not disqualify you for a lot of other wonderful jobs in public service, would make it very difficult to run the police force or the administration of justice in the province. I think we would like to hear that from the Premier, just as a matter of general impression.

**Hon Mr Rae:** I am not going to satisfy you today, Mr Scott, but I am going to take your views under advisement very seriously. I can think of a lot of situations where as a general rule—it is a good idea to avoid making general rules; I would have to look at the situation, and at the circumstances—

**Mr Scott:** You have recommended a few for us.

**Hon Mr Rae:** But I hear what you are saying and, as in all things, I take your view seriously.

**Mr Harnick:** Premier, one of the things that concerns me about the Drainville matter is the fact that he having been convicted and having appeared at the time that he was sentenced and not showing any remorse for what the court found, how can you then not come to the conclusion that he has been disrespectful to the system of justice? That is what bothers me about it; it is not the fact that he did it and he did it in good conscience. But now he has been determined by a properly constituted court to have done something wrong and contrary to the Criminal Code, and he has shown no remorse. I would be very concerned about that. He belittles the system of justice.

**Hon Mr Rae:** I think that until the question of Mr Drainville's sentencing is resolved by a higher court, it would be wrong of me to comment any further.

**Mr Harnick:** I am not asking you to comment on the sentence. The fact is, he has been convicted.

**Hon Mr Rae:** Your comment is on the record and I think other members will have their views as well, but in terms of any further comment by me, it will have to wait that next stage. Mr Chairman, thank you very much.

**The Chair:** I would suggest that we adjourn for a couple of minutes.

The committee recessed at 1432.



1444

## CONFLICT OF INTEREST COMMISSIONER

**The Chair:** Although we do not have our full membership here, I would none the less like to welcome Commissioner Gregory Evans from the Commission on Conflict of Interest.

**Hon Mr Evans:** I am Greg Evans, the Conflict of Interest Commissioner, and this young lady is my executive assistant, Lynn Harris. I think you have all met her.

**Mr Poirier:** We have all met you also.

**Hon Mr Evans:** You only go to confession once a year, so it is not too bad. But my responsibility as the Conflict of Interest Commissioner, as I see it, is to assist the members of the Legislature in advising them with respect to their obligations under the act, identifying areas of possible conflict of interest and providing advice to either prevent or resolve the conflict. In addition, I am empowered to investigate complaints made in conformity with the act.

It is also my responsibility to prepare and file members' public disclosure statements on an annual basis. The most recent disclosure statements, as of 19 September 1990, were filed with the Clerk of the Legislature last Thursday. Very dull reading, I can assure you; so I do not think it will get much play in the newspapers. But I am pleased to advise that the members were very co-operative in fulfilling their obligations and that all have complied with the act. I might say in passing that some would prefer to say, "Same as last year," but we do not permit that. Next year, anything that comes in like that is going to go back; so please, give it a better whirl than that, "Same as last year."

With the introduction of the Premier's guidelines on 12 December 1990, he requested that I provide whatever assistance I can consistent with my statutory authority and my independence as an officer of the Legislative Assembly. To this end, I am also pleased to advise that, in my opinion, all members and ministers and parliamentary assistants have complied with the Premier's guidelines, with the exception of three parliamentary assistants. These three members were granted an extension for divestment and their efforts to comply continue to be monitored by my office. You will understand that my function is to operate within the confines of the act. The Premier is entitled to make whatever guidelines he sees fit, as any Premier, I suppose is, for the members of his cabinet and parliamentary assistants. What I was doing there was to help him with the concurrence of the members of his executive council and parliamentary assistants, so in that respect I was assisting him.

I am here today to respond to your questions with respect to the Members' Conflict of Interest Act and, in some ways, with respect to the Premier's guidelines; very limited, though, I suspect, with respect to the guidelines.

The Ontario act has generated a great deal of interest in many of the provinces and as far away as Trinidad and Tobago and New Zealand and has formed the basis of legislation in a number of jurisdictions. However, like any new act, in my opinion, that act is not without some prob-

lems, some faults. In late 1989, after 16 months of responding to 63 inquiries and filing two annual disclosure statements, I submitted for consideration by the Legislature comments and suggested amendments to the act. For your convenience, I prepared a chart setting out the act and these comments, and I believe you all have a copy of it. Subsequent to that submission, and over the past year, I have made additional comments which are shown in italics. I have also prepared a similar document with respect to the Premier's guidelines which may be of some assistance to you.

The present legislation is an attempt to balance the need to maintain high standards of ethical conduct in the public service without unduly inhibiting people of outstanding ability in the private sector from seeking public office. The integrity of any political system, however, depends on the honour and integrity of the elected officials. We all know that morality cannot be legislative, and my position as commissioner should not remove responsibility for compliance from the member and transfer it to the commissioner. I think the member is ultimately responsible. But my two and a half years' experience as Conflict of Interest Commissioner have been interesting and challenging and I hope that the experience which I have had will assist you in your deliberations with respect to the act and the guidelines.

1450

I may say that I have received excellent co-operation from all members. Some we had to jog a little bit to get them in there and some we had to jog their memories, though it was unusual. Everybody knows their liabilities but many of them, I think for the first time, discovered what their assets were. It is understandable, because if you owe money everybody is writing to collect it, but if you have assets the bank does not call you up to tell you that you have money in the bank and how much.

So I do say that the members, for a new act and for the first time, this idea of going to confession, I am sure, may have disturbed some. What I have tried to do is keep this office small. I think if you go to confession you do not want to hear it out on the street, and that is why we have Miss Harris, who worked with me when I was a Chief Justice and has had considerable experience in these matters, and occasionally we have one assistant who will come in on a part-time basis. We want the files to be kept secret and we hope to have some legislation permitting us to get rid of the files after a reasonable period of time so that—

**Mr Poirier:** But not the members, just the files.

**Hon Mr Evans:** There is another agency that looks after that.

With that, I think I am available for whatever assistance I can give you.

**Mr Scott:** I would just like to ask two questions. I am conscious, Chief Justice, that you would not want to and would not feel, in your present life, any capacity to answer political questions, so I will try to avoid those in so far as I can.

**Hon Mr Evans:** Good.

**Mr Scott:** I happen to know something about the draftsmanship and form of the act you are administering, and let me tell you that, in drafting the act, we tried as best we could, and there may be failures, to define what we meant by conflict of interest. That occurred for the very practical reason that at the time the act was being prepared people were talking about two things: a conflict of interest and a perceived conflict of interest. The trouble with that is, some people thought that even if you did not have an actual conflict of interest you could have a perceived conflict of interest. The trouble with that is, the question really becomes "perceived by whom?" Sometimes it is perceived by the newspapers; sometimes it is perceived by a Premier; sometimes it is perceived by somebody else. So we left out "perceived conflict of interest."

In the guidelines, on the other hand, this notion of a perceived conflict of interest—that is, something that is not a conflict of interest but is perceived to be a conflict of interest—comes back. Can you give us any help on how you define a perceived conflict of interest, accepting as a start-up that it would not be an actual conflict of interest?

**Hon Mr Evans:** Of course, as you have indicated, that is a very subjective matter. If a member has \$100,000, A will say, "That person would never be corrupt because he has all the money he needs." On the other hand, B will say, "How did he get it?" and therefore, "He must have been dishonest at some stage." I do not know how you look into the perception business. It is the newspapers would believe one way and one journalist would believe one. Many of them have partisan approaches to these things. I think that would be very difficult to administer.

**Mr Scott:** Yes. One other question about divestment. Under the Premier's guidelines, which you have seen, in order to serve in cabinet or as a parliamentary assistant you have to either have no significant assets or be prepared to divest yourself of the ones you have or get a go-by from the Premier for the reasons that are set out in the paragraph.

We are talking a world, by the way, in which everything is disclosed, so everybody knows what you have, and we are also talking about a world under your act where a declaration, "I am in conflict and cannot vote," has to be made, whether it is in the Legislature or in cabinet. But the divestment requirement, which is superficially so attractive, it seems to me, means that office in the Legislature or office in the executive council, is going to be open only to Ontarians who either have no assets or can divest themselves of them, or get this go-by from the Premier, and the idea that the assembly is a collection of citizens representative of the whole community is in trouble. Are you familiar with any other jurisdiction that has a divestment system like this?

**Hon Mr Evans:** I do not believe there is any. I believe the federal bills that have been floating around for some years are still in limbo. I think they were advocating divestiture.

**Mr Scott:** Have you heard of any others anywhere in the world?

**Hon Mr Evans:** No, not that we have come across. We have most of them. That is a pretty rigorous—and as I

stated one time before I saw the guidelines, maybe the only candidates for cabinet are going to come from Millhaven or Penetang one day.

**Mr Scott:** I certainly will not touch that observation with a 10-foot pole.

**Hon Mr Evans:** I think it is a pretty draconian measure.

**Mr Scott:** Having known you for a long time, I know divestment never caused you any trouble as you had about 13 kids and divestment was automatic at source in your case.

**Hon Mr Evans:** Way ahead.

**Mr Scott:** But how are we going to grapple with the problem that there will be some people who have done well in this world in their communities, who have made a good living, and who are asked to make a sacrifice in terms of divestment that is really quite extraordinary in order to serve for a month, two months, three months, or four years in a cabinet? One of the concerns I have is that it is getting tough enough for all parties to get good representative candidates to run for office; we are sort of closing down the avenues because people out there are now going to be told, "Look, if you've accumulated any assets you can certainly run for office, but don't expect that you'll ever be able to get into the cabinet, because you'll have to sell them, leaving nothing that grows for your old age."

**Hon Mr Evans:** I agree with you. I think it would be very difficult. The only thing I can say is that I suppose each Premier, as he comes in, has the right to set certain rules for his cabinet and parliamentary assistants. But I think on some occasions parliamentary assistants stayed in for only three or four months and then were gone; their tenure is about as good as a National Hockey League coach.

**Mr Scott:** Even worse, if I can put it this way, the previous Premier decided that all parliamentary assistants should change every six months so that everybody would have part of the experience. It is going to be very tough for parliamentary assistants under this regime because they will have to sell their assets in order to get six months' worth of experience. Pretty tough stuff, do you agree?

**Hon Mr Evans:** I think it would be, yes.

1500

**Mr Sorbara:** Excuse me, Mr Chairman, are we not allocating time?

**The Chair:** Given that we have a fair bit of time and we are not time-limited, I suggest we rotate the questions among the caucuses as opposed to allocating time.

**Mr Carr:** I have a question regarding number 18, gifts and benefits. I have a particular case here—

**Hon Mr Evans:** Are you talking about the guidelines or in the act?

**Mr Carr:** The Premier's guidelines in the left-hand corner. It relates to a particular situation. I was wondering how it can be handled or what you suggest. It is a case where an artist in my riding gave the former cabinet some—how should we describe it?—birds as a gift worth



about \$400. It was done during a cabinet presentation and some of the cabinet ministers came in and they got left in the box. We are now in the situation where the artist wants his gifts back, and these things are literally lost somewhere.

It makes it very difficult when you are talking about gifts because, under this law, he would say they got them and they should have declared the birds as gifts exceeding \$100. But the fact is that when most of the cabinet ministers left that meeting, the birds sat in the box and they do not have them any more. I was just wondering, when it comes to gifts and benefits like that, how practical it is to get into something in terms of gifts and so on down that low. Have you found it very difficult to enforce these types of things?

**Hon Mr Evans:** No, we have not. We have had this situation where an artist would give a member a painting. The artist thinks it is worth \$15,000 to the member. I took the position, "What is the value of the frame?" The painting is of no value to anybody else except that particular guy. The value is the artist, and if the member would get his wife or husband convinced to hang it up in the house it would be a miracle, probably.

I did not really have too much difficulty with them. The only thing I consistently said is, "If you see a developer coming, run." But people get tickets to certain things and they are worth \$300, but most of those tickets have a dinner value of about \$50 and the other part, \$250 or whatever, is an income tax exemption to the person who buys the ticket and not to the member. So I did not consider it was a \$300 gift; I figure it was about \$50. Where you can stand the rubber chicken, you go. I did not really have much of a problem with that.

**Mr Carr:** So the disclosure of gifts is not a big problem.

**Hon Mr Evans:** No, it has not been.

**Mr Mills:** I guess, Judge Evans, I agree with the remarks that you made. Being a parliamentary assistant, there is a tremendous price to pay for some people for a tenure of office that, to say the least, is precarious. I think particularly, if I am a lawyer, that I sell my law practice and down the road I am gone and the money I earned being a PA in no way compensates for that. To get to the point I am trying to get to: Mutual funds, I believe, are fine for someone to have. Right?

**Hon Mr Evans:** Some of them.

**Mr Mills:** Some of them. But a blind trust is not allowed. I just wonder, a mutual fund is administered at arm's length and the blind trust would be the same manner. Why would one be acceptable and one would not be?

**Hon Mr Evans:** I think the blind trust has probably fallen into disrepute because everybody thought it had too many eyes; there really was nothing blind about it. If you have certain assets and you know what they are, you turn them over to a trustee and you still know what he has. If he sells certain ones and then replaces them, you still know what he controls. So I do not think it is any great advantage to have a blind trust. If you put your money into treasury bills or something like that, I do not think that is any problem, or if you put it into a mutual fund where you

have no control over it, or if you put it into a mutual fund where I think it is called not an open-ended one but a closed one, where it just deals in specific types of stocks and has a limited membership of shareholdings.

I think it is very difficult to really put all this aside in the hands of an independent trustee unless you are going to pay that trustee, and he should be paid, I presume by government, to manage those affairs quite independently of you. It is very difficult if you run a small business and you developed it and you turn that over to the trustee and the trustee may feel, "Oh, this is a really good business offer coming in to sell the business." I think a trustee would think a long time before he would sell it without your approval. You may not want it, so you may want to keep it for your son or son-in-law or somebody else. There are problems with any kind of trust that you set up. You can put your money into certain things, but you could put them in there yourself, without the trustee, into government securities, whether provincial or federal or something of that kind. That does not create a problem for you. I do not know whether it creates a problem if you have a small number of shares in a publicly traded company. I do not see that 200 shares of Bell Canada are going to give you much right to direct the manner in which Bell Canada carries on its business.

There is a difference if you have a private company, and particularly a numbered company, where you cannot really tell from the look of it what that company is engaged in unless you do some searching. I think that is a different situation. But even then, if you are a minority shareholder you do not have too many rights to ask in which direction the company is going. If you have a trustee, I do not think he has any rights or he may have trouble finding out just what is going on.

I do not know whether I have answered your question. I have rambled a bit. I thought I was a politician for a moment.

**Mr Sorbara:** In this room you can be forgiven.

**Mr Mills:** It is a wonderful answer. All I hope is that I can remember it, because I am not here asking that question for myself, but on behalf of a colleague who asked me to pose it so I could report back to him. He could not be here. So I hope I can grasp whatever you said.

**Hon Mr Evans:** What we have tried to do is to have people write in and put a question to us, but we like it not hypothetical, "What would I do if such-and-such happens?" Give us a factual situation and we will give you an answer. Hopefully it will be correct, but if not, then you are at least protected by the fact that we write back and say, "This is what we can give you."

I think more people are writing in. We do not like a phone call at the last minute. We try to give you an answer if it is urgent, but then we ask you to please write and then we will confirm it in writing, and most of them have done that. The only ones we have trouble with, I find, are those who have been on municipal councils. They just used to call up and away you go, there was nothing to it. We have to impress upon them that the days of whisky at Christmas

and the turkey at Thanksgiving or a trip to the Rose Bowl are no longer done.

**Mr Scott:** Oh, they are a bad bunch, those councillors.

**The Chair:** Before Mr Sorbara's question, there are copies of Mr Rae's letter, I believe, to Mr Aird. It will be circulated.

**Mr Sorbara:** Let me begin by saying that we are glad, all of us, to see you here at this committee. I will call you Commissioner, although my friend calls you Chief Justice and you—

**Mr Scott:** Just in case he ever gets back.

**Hon Mr Evans:** It is not what he always called me.

**Mr Sorbara:** I think there are many tributes we could pay you, because you have spent a number of years serving the province and, in your current capacity, one that is, if not an enormous burden administratively, certainly a very politically tricky one, I think you would agree, in the sense that there are some difficult judgements for you to make at times.

**Hon Mr Evans:** Always. For 25 years I was doing it, and for 25 before that as a lawyer I did it; so you make your judgement call, hoping you are right.

**Mr Sorbara:** Just to fill in some of that background, during the time that you practised law, did you ever practise any corporate or commercial law?

**Hon Mr Evans:** It was in Timmins; there are not too many corporations. I did some but, I must say, not many. I got a real course in administrative law, partly through speaking with you and some of the accountants who came in, Joan Smith and others, in the past few years. I really got a course in corporate law. I think I could pass the bar exam now.

1510

**Mr Sorbara:** For the benefit of the committee, you have been sitting as the commissioner since when?

**Hon Mr Evans:** Two and a half years.

**Mr Sorbara:** Two and a half years—really since the act was passed and proclaimed.

**Hon Mr Evans:** Proclaimed, yes.

**Mr Sorbara:** So you have been through about two years under a Liberal administration and close to six months under a New Democratic Party administration.

**Hon Mr Evans:** That is right.

**Mr Sorbara:** Is it safe to say that there is not much difference between the two, from the perspective of your work?

**Hon Mr Evans:** When they come in the door, I do not know who they are and I could not care less. That is about the attitude. Looking around the table today, in fact, I see your names and I know you are sitting in the Legislature, but I try not to remember. Some people I do know from past experience, but most people I do not know. When they come through the door, I assume they are all honest and wanting to do a job.

**Mr Sorbara:** In that, you are certainly right.

You have provided us with a copy of the 1987 act, along with the commentary, and this is your commentary after two years of experience with the bill.

**Hon Mr Evans:** Right.

**Mr Sorbara:** I take it that you would be delighted if this committee could spend some time examining in detail your recommendations and include them in our recommendations to the government when we reconsider this act.

**Hon Mr Evans:** I would like you to take a look at it anyway.

**Mr Sorbara:** I would not mind going through some of those with you in just a few minutes, but for the time being, suffice it to say that these are the sum of the changes you would suggest as a result of your experience with the act.

**Hon Mr Evans:** That is right.

**Mr Sorbara:** Okay. The Premier told us this afternoon that when he introduced these guidelines, he temporarily put himself in the position of decision-maker in respect of disclosure and some other items. The guidelines were introduced on 12 December 1990, just towards the end of the first session of Parliament. Did you have any discussions with the Premier beforehand about his conflict-of-interest guidelines?

**Hon Mr Evans:** No.

**Mr Sorbara:** So he did not—

**Hon Mr Evans:** Well, we had a comment on the letter he sent, but that was all. The guidelines were already set out in it.

**Mr Sorbara:** So he did not ask you whether or not you would be prepared to make the decisions that he set himself up as making in these guidelines?

**Hon Mr Evans:** I did not think I was entitled to ask him that or say anything to him about that. I thought every Premier has the right to set whatever guidelines he wants for his cabinet and parliamentary assistants. I did make a few suggestions, as you will see.

**Mr Sorbara:** On these comments on the guidelines; but these were made and the guidelines were considered by you after they were announced in the Legislature.

**Hon Mr Evans:** A couple of months before that, before the end of November, I had one letter from him in which he stated, "I am writing to confirm it is the government's intention to introduce amendments to the legislation." Then he said: "The new act will deal with parliamentary assistants. I am going to communicate with them and ask their okay to discuss it with you," and so on. I did receive a copy of the guidelines and I responded to that on 7 December. I asked certain questions concerning the guidelines. I wanted clarification of it so I could—

**Mr Sorbara:** So you received a copy of the guidelines on 7 December?

**Hon Mr Evans:** Yes, I did.

**Mr Sorbara:** And you were asked to comment?

**Hon Mr Evans:** Yes.



**Mr Sorbara:** Not to get into the detail of your commentary, but in the letter from the Premier, did he ask whether you would be prepared to make a decision as to whether or not an individual minister or parliamentary assistant would have to divest?

**Hon Mr Evans:** No.

**Mr Sorbara:** I am not sure whether you want to answer a hypothetical question, but I am going to ask it anyway and you can just make up your own mind on it. Section 15 of the guidelines says, and if we could turn to them, I will quote from them. The initial statement is that: "Ministers are required to divest themselves of"—if I could summarize, everything they own of a business nature—"any asset, liability, or financial interest which causes or could appear to cause a conflict of interest; and all business interests." That is just about everything, would you not agree?

**Hon Mr Evans:** Yes, practically everything.

**Mr Sorbara:** And then there is the caveat clause, which states that "except where the minister satisfies the Premier that the interest has been fully disclosed..." etc and if undue hardship would be created.

In his testimony today, the Premier suggested that it would have been inappropriate for you, as commissioner, to make that decision as to whether or not the interest had been fully disclosed, that there would be undue hardship, etc.

My hypothetical question is this: Had the Premier asked you to take on those new responsibilities—that is, to determine where divestiture would be necessary—would you have refused to take on that new assignment?

**Hon Mr Evans:** I think I would wait for legislation. I do not think I should be jumping around because the Premier says certain things. I think my responsibility is to the Legislature, and I would think that—

**Mr Sorbara:** To only act under the Legislature?

**Hon Mr Evans:** Right.

**Mr Sorbara:** But there are instances in here where there are some new responsibilities for the commissioner; we could get to those later. I just noted in passing that you are referred to in here, or the office is referred to in here, for example, in section 28:

"Where the commissioner has recommended a course of action to a minister in relation to an actual or potential conflict of interest, the minister shall immediately advise the Premier of the situation and the commissioner's advice."

You have disclosed that divestiture is a rather final remedy.

**Hon Mr Evans:** I said draconian.

**Mr Sorbara:** A draconian remedy, I think you said. In your experience, given the number of disclosure statements that you have seen, as a practical matter do you think divestiture is a realistic option?

**Hon Mr Evans:** No, I do not.

**Mr Sorbara:** Neither do I, as a matter of fact. I think it is important that the committee hears you say that without taking sides on the issue—

**Hon Mr Evans:** I just want to qualify it to this extent: I think divestiture of certain assets may be required, but I do not think complete divestiture is practical.

**Mr Sorbara:** For example, if you have a 12% interest in a piece of land, how does one divest that? If a member said to you, "How do I get rid of this? I want to serve in Bob Rae's cabinet" would you be able to advise him on that?

**Hon Mr Evans:** I think all I could say is, if the Premier insists on this, if that is a precondition of your appointment to cabinet—

**Mr Sorbara:** You will have to do it.

**Hon Mr Evans:** He will have to do it.

**Mr Sorbara:** But I notice in—

**Hon Mr Evans:** With a 12% interest, you are not going to get very much. It is a distress sale, if you wish.

**Mr Sorbara:** I notice in your commentary on the act, there is a wonderful little line in here—I am reading from page 6: "The tenure in office of a cabinet minister is about as secure as that of a coach or manager in the National Hockey League." I take it you would not be offended if I suggest to you that the tenure is even less secure than that?

**Hon Mr Evans:** I think I probably made this comment before the election.

**Mr Sorbara:** Yes. Well—

**Hon Mr Evans:** I know I did.

**Mr Sorbara:** I am not done yet. What did you mean when you made that comment? What were you thinking about?

**Hon Mr Evans:** I understood that there was a policy, and I know there is in certain jurisdictions, where a parliamentary assistant stays for three months and moves on. Certain parliamentary assistants, according to the conversation I have had with some, get plenty of work to do and become involved in legislation if their minister agrees, and there are others who get very little work to do.

If you are trying to rotate it through the so-called backbenchers, then you would not be in there very long. It has nothing to do with whether you were competent or not. If that was a policy, to change every three or four months and move you to another ministry or out and have you supported by somebody else, then—if you did that, it would be a pretty tough job to pick it up after three or four months.

1520

**Mr Sorbara:** Even as a cabinet minister, would you not agree that it is the case that one unfortunate comment by a cabinet minister about thus and such, and he could see his or her career as a cabinet minister come to an end rather quickly?

**Hon Mr Evans:** That is true.

**Mr Sorbara:** And had he or she divested his or her assets, the financial losses might be very significant indeed, because divestiture at arm's length means you cannot get them back.

**Hon Mr Evans:** That is right.

**Mr Sorbara:** Just to reiterate, on the question of divestiture, you were not consulted by the Premier about your views on divestiture.

**Hon Mr Evans:** I think I have stated that the Premier will be very busy, that is under divestment, and undue hardship will vary according to the financial position of a particular minister. I take it if a person had \$500,000 worth of real estate and had to sell it and lose 20%, that might not be quite as bad as a man who has \$5,000 and has to divest. That is what I was referring to. Undue hardship is what? That becomes very difficult. That is the problem with it.

**Mr Sorbara:** Since the guidelines were introduced, has the Premier contacted you about the possibility of you assuming the responsibilities that he assumes to himself under section 15?

**Hon Mr Evans:** No. I just assumed that it would have to come before your committee and then recommendations would go to the Legislature, which would then pass upon it, and if it is included in the act, fine, try to enforce it.

**Mr Sorbara:** What would your recommendation be to this committee, if section 15 is going to be incorporated into the act, as to the responsibility for determining undue hardship or sufficient disclosure—in other words, all the things in section 15? Should that responsibility, in your view, lie with the commissioner with the Premier, with a combination of the two or with someone else?

**Hon Mr Evans:** I think it can be done, but I think you would have to make it by way of exemptions and giving a lot of discretion to the commissioner. I am not so sure the Legislature would be willing to do that. That is putting quite an onus on the commissioner, but if that onus is given, he will have to discharge it as best he can.

**Mr Sorbara:** Let us assume that section 15 becomes the law, except that where it reads "satisfies the Premier," the words are "satisfies the commissioner." How would you determine whether or not there was undue hardship? I am sorry, it is a speculative question, but would it be a 20% loss of value or a 10% loss of value? How does one evaluate undue hardship?

**Hon Mr Evans:** I would not know what an undue hardship is. I think there should be something better than that outlined to the commissioner. What is undue hardship? I do not know whether it is 10% or 10%, or whether it is starvation wage or what.

**Mr Sorbara:** These are the questions that we are going to be wrestling with, I guess, and if we can—

**Hon Mr Evans:** I thought if the collective minds of the Legislature were put to it, I am sure they would come up with an answer.

**Mr Sorbara:** What was that comment about Millhaven and where else?

**Hon Mr Evans:** Penetang.

**Mr Sorbara:** Penetang. Mr Chairman, I do not have any other questions at this time. Before we finish today—I am not sure—

**The Acting Chair (Mr Fletcher):** We have lots of time, Mr Sorbara. We can come back. There is no problem with that.

**Mr Sorbara:** It may even be that the commissioner would revisit us, because I think we are seized of this matter until we—

**The Acting Chair:** You have raised some good points. Thank you.

**Hon Mr Evans:** Just so you are aware, I am going to be away for three weeks.

**The Acting Chair:** That is all right, we will make sure we come and get you.

**Hon Mr Evans:** Okay. I will be away probably three weeks or a month.

**Mr Harnick:** The act indicates that you are the person who receives the disclosure. You then undertake the investigation and, in turn, you make the decision. Having read some of the earlier debates when this bill first came before the Legislature, there was some concern in the commissioner being charged with all of those duties and being able to be perceived to carry out each task and provide the hearing or the forum so that someone could say they had their day in court. You heard the Premier earlier this afternoon indicate that he believes there should be some recourse to the courts. Can you tell us, essentially, how each of these functions are in fact dealt with and what court application should be available?

**Hon Mr Evans:** I think the further you stay away from the courts the better off you are going to be, because there is no quick way of getting matters before the court. At that time, the problem was either augmented or gone. I do not see any particular reason to go to the court.

**Mr Harnick:** What about by way of appeal from a decision you might have to make?

**Hon Mr Evans:** That could pretty well destroy the commissioner's office in a very short time. As I see it, anyway.

**Mr Harnick:** You, then, would differ with the Premier—that is obviously an issue we are going to have to deal with—

**Hon Mr Evans:** I think you have to ask yourselves what is the advantage of going to the courts, because actually the Legislature is the final court; you people make the final decision. I make the recommendations. If you do not like the recommendations, I am not going to be hurt about it. But I think it is you rather than a court that should make the final determination. All I do is make recommendations in most instances and whether a court would be any better, I doubt it.

**Mr Harnick:** The difficulty, I suppose, with the Legislature making the final decision is that it all comes down to numbers and you may not—

**Hon Mr Evans:** So does everything you do.

**Mr Harnick:** But you may not like what the commissioner recommends; the Legislature has to make that final decision. The Legislature or the party that forms the government



has the numbers; essentially, it can circumvent everything that the commissioner may recommend.

**Hon Mr Evans:** Well, they can do that.

**Mr Harnick:** At their peril, obviously.

**Hon Mr Evans:** I do not know how long you would have a commissioner if you overruled him too often. I think he would probably pack up and say keep it. But actually, that is your responsibility, that is what you are elected for, and I would not be upset if somebody refused to accept my recommendation. I have very limited things that I can do, anyway, by way of recommendation.

The process is slow to begin with and I think the more of those things that you have, it destroys it. You have a court system in the United States where you can make an appeal in one area in the state court and if you do not like that you go to a federal court. So, 15 years later they are still debating whether a man should be hanged or imprisoned or what should be done because of the process. Court process is slow, we know that, but it is going to speed up a bit now.

But, if I can get a plug in for the courts, legislators must become aware of the problem and do something about it. For years, when I was chief justice, we gave our annual statement. I concluded that while justice had a high profile, it had a low priority with the Treasury Board and now we are suffering from that.

**Mr Poirier:** That is a good plug for the courts.

**Ms S. Murdock:** He did that so well.

**Hon Mr Evans:** I did the job and nobody paid any attention. Not even when we got \$25 million off Amway and I thought that was going to go into the court process. I was very disappointed when that disappeared into the general coffers. That was a real grab, you know that? No work on the part of the province, it was mostly federal. It happened here. I am sorry; I got distracted.

1530

**Mr Carr:** First of all, I would agree with you about the court backlog. Unfortunately, now that people convicted of drunk driving charges are getting sprung all of a sudden it is important, and it is unfortunate that we did not listen to your advice.

But going on—I will talk about the new guidelines—section 24 deals with another cabinet minister in a constituency office. I was wondering how you would handle a problem like this: If I am the Solicitor General and I have written the Minister of Community and Social Services about a particular problem on behalf of my constituent, as we all do, it would be inappropriate for me at the next cabinet meeting to say: “Charles”—when he is Minister of Community and Social Services—“what about that? What is your answer on that?” Is that what that is referring to, or am I wrong in reading that?

**Hon Mr Evans:** I think ministers should not be interfering with any agency of the government, and I think now that parliamentary assistants might well be in that same category. But that does not stop your constituency office from representing the constituents, and I think once you

become a minister you have to have a level in there of non-intervention.

**Mr Carr:** So this would be for workers' compensation situations—

**Hon Mr Evans:** Workers' Compensation Board and things like that. I do not think it is right for a parliamentary assistant to come before the Liquor Control Board of Ontario because invariably he is going to say, “I am the parliamentary assistant to the minister.” To say that the minister has a right to appear, I think he is restricted and, I think, properly. I do not think that if his constituency office goes in there they should start waving a flag that they are from the ministry of certain health and welfare—

**Mr Carr:** But if they cannot, then you do not see, by default, actually your constituent not being represented properly then because of that?

**Hon Mr Evans:** I thought that was what the constituency office was for. And is there not money paid to somebody in the constituency office, or am I wrong in that?

Interjection.

**Hon Mr Evans:** Yes, so you have a salaried staff in there that he would represent.

**Mr Carr:** So that person would do it rather than the minister.

**Hon Mr Evans:** I thought that was what he would do. I think it makes it very difficult for a board and you have appointed him and he has got three years or maybe three months to go and you are the minister coming in and you can get rejection of your client's application, your friend's application, whatever you want to call him, your constituent's application. I think that would be pretty difficult and embarrassing for that member, for the same reason that you do not have former members of your firm appear before you for a period of time when you are in court.

**Ms S. Murdock:** I have one question. But continuing in that line, for instance, I, as parliamentary assistant to the Minister of Labour, am in charge of workers' compensation. My constituency assistants then represent workers' compensation claims in my riding. You are not saying that they should not make presentations to the board, just that they should not wave the flag saying, “My boss is”—

**Hon Mr Evans:** Yes, that is right.

**Ms S. Murdock:** Okay.

**Hon Mr Evans:** Yes. You can represent them. I thought that was what the constituency office would do.

**Ms S. Murdock:** Yes, it would put a real constraint on the staff, depending on the MPP's position, whether or not they could make representations on behalf of the constituents who were having difficulty with a particular ministry.

**Hon Mr Evans:** I am sure if somebody comes to the parliamentary assistant and has a complaint to make, they want to see you and you then refer them over to your worker in the constituency office.

**Ms S. Murdock:** The question I wanted to ask is one that was actually raised, inadvertently, I guess, last week and I just would like your opinion on it. Mr Elston was

talking about knowing of a case where in order to put the business interests into a trust it cost an enormous amount of money, and of course the MPP got no recompense for that.

**Hon Mr Evans:** Right.

**Ms S. Murdock:** I would like to know what your thoughts on that were, whether or not there should be some form whereby ministers and PAs who have to put their assets into a trust should be recompensed.

**Hon Mr Evans:** I think they should be. In the federal proposed legislation there is a provision in there that they pay for it. You are penalizing him by putting it into a trust and then you turn around and make him pay for it. You can say, "What is an arm's-length transaction?" You cannot have your brother in there, but you might have somebody else come in to work in the business for you. I think if you are going to go that far to divest and really shove it away and get a trust company or a trustee or an accountant or somebody like that who is independent and removed from you to carry out the duties of the trustee, then the government should pay it.

**Ms S. Murdock:** Okay. I have to apologize because I am a guest here today and I have not read it all, not realizing that I was going to be here I did not, so I am not familiar with the exact clauses. Is there anything within the legislation or in place within the legislation that would allow, or could we just add it, that the government should recompense costs?

**Hon Mr Evans:** I think we just add it. There is the federal legislation but, as I say, that has never been passed. In my speaking with those in charge of it down in Ottawa, it is never going to pass in the form that they have got.

**Ms S. Murdock:** And does that legislation recommend—

**Hon Mr Evans:** Because of the divestment.

**Ms S. Murdock:** Divestment and payment.

**Hon Mr Evans:** And payment, yes.

**Ms S. Murdock:** And it probably will not pass. Is there any reason for that, other than the obvious?

**Hon Mr Evans:** Apart from the obvious, there is the fact that it has been on the order paper for some time and nothing has been done about it. It has been brought up and it died. So this is about six years since it has been there.

**Mr Sorbara:** Commissioner, you have interviewed a lot of MPPs. Would you agree with me that they are generally a collection of quite honest men and women?

**Hon Mr Evans:** I believe that, yes.

**Mr Sorbara:** Have you ever seen a case in your two and a half years of interviewing where you had grave suspicions about the purpose for which the individual had entered politics; that is, for personal gain?

**Hon Mr Evans:** No, I have not. I may say, though, probably I am biased because, having been a judge for some time, people say, "Why did you become a judge when you're going to get half the salary you made as a lawyer?" I think maybe you owe something to the country, and I did not think I was alone in owing something to the country. I think being a politician is a lousy job from my

observation of it. It is hard work. It is like when you are a lawyer you think the judge has an easy thing; he just sits up there, dispenses it left and right, does not even have to think. When you become a judge you find out that it is a little different; you work hard and politicians work hard.

As I say, with everybody who came through that door I assumed that he was an honest individual who wanted to do the right thing. The only reason I have asked them on one occasion in there, and you will probably see it, I might have the right to do a little spot-checking, not for the purpose of finding because I do not believe him, but because I think some members are a little careless. I just want to bring home to them that the filing of this return is important and we would like it accurate.

What I am talking about is that it probably comes in and you look at it and you say, "This is the same as I had last year," where he just changed a few dollars or something. You get a pretty good picture overall of his worth and so forth. It just cannot be. So I would likely ask him, "Please bring me your last statement from the bank"—not a whole lot of work or anything like that; just to bring it in—to impress upon him, not that I do not trust him but that I think he is just careless.

**Mr Sorbara:** So it is like supporting documentation.

**Hon Mr Evans:** That is right. That is all I want. I do not want the right to go down and pry into his business affairs.

1540

**Mr Sorbara:** What about the other "private" interests that politicians have, the private political interests? My own impression is that most of us, once we are confirmed in our commitment to this crazy life, set aside monetary interests in favour of that other interest; that is, political support. It seems to me that sometimes we will do far too much to ensure that we have enough monetary support from a business or an agency of government, but what about political support from the various constituencies to which we direct our political attention, whether that be our electoral district, or if I am the Minister of Consumer and Commercial Relations, the constituencies that I deal with in that ministry, or if I am a parliamentary assistant of Labour, perhaps various elements of the trade union movement? Is that not a private interest as well that we should be concerned with? Have you got any thoughts on that?

**Hon Mr Evans:** I do not think you can divorce yourself completely from your background, for instance if you are interested in commercial activities. I do not think you can quite divorce yourself from it, but I believe all of them do their best to set that aside. I did say to Premier Peterson at that time when I saw this for the first time, "You don't pay them enough." I really thought some of them were flirting with bankruptcy, and quite honestly I thought some must be having a pretty difficult time with families to make ends meet, and the contribution they are making I wonder whether it is worth while.

**Mr Sorbara:** But on the political spectrum if, for example, I as one of the incumbent ministers did emerge out of a job in which she was a chief negotiator for the public sector trade union, the Ontario Public Service Employees



Union, and then becomes the Chairman of Management Board, she quickly switches roles and may well have some moral or political debts to pay. Is that a conflict of interest in your view?

**Hon Mr Evans:** No, I do not think so, unless something is done, and we are talking then about perception. I think you would have to wait and see that something has happened. It is just the same as somebody who has been a General Motors executive or something and is retired and comes here or a school teacher who is retired; I think they would leave that aside. Probably they are the best people. They know how the other side operates, and the fact that they have been in that position for some time and then moved over, I do not think makes a—

**Mr Sorbara:** And in fact there would be no way to divest yourself of that former responsibility.

**Hon Mr Evans:** Short of a lobotomy.

**Mr Sorbara:** Short of a lobotomy. In your view, and I want to tell you that I agree with you, there is absolutely nothing inappropriate for someone, having been elected and been chosen to play that role, to emerge out of something that would be a conflict if you are trying to do both of them at the same time but no longer is a conflict because it is disclosed that you had that former role. People can evaluate your performance as the Chairman of Management Board based on that information.

**Hon Mr Evans:** Right.

**Mr Sorbara:** So it is disclosure to the public that really is the sine qua non of dealing with conflicts.

**Hon Mr Evans:** Correct.

**Mr Sorbara:** We had discussions here about a person being arrested and convicted. As long as that is part of public information, the public can make a determination.

**Hon Mr Evans:** Right.

**Mr Sorbara:** I do not know who else has questions. I would like to get your commentary on the bill. What I would like to do is just invite you to highlight for the committee the changes that you think should be incorporated into a bill amending Bill 1.

**Hon Mr Evans:** Some of them are kind of house-keeping.

**Mr Sorbara:** Yes. And I invite you to go wherever you want. Obviously we do not need to go over every section in detail, but I would like you to highlight the major thrust of the comments and the major thrust of the amendments that you are recommending.

**Hon Mr Evans:** In section, 1 I wanted a private interest to be defined differently. The private interest is one these negative ones; it does not include an interest in a decision. I thought it should be: “‘private interest’ is a benefit which accrues to the advantage of a member or a person or corporation to which the member knowingly seeks to give an advantage over other members of the public but does not include an interest in a decision”—and you put (a), (b) and (c) after that. I thought that was better than the way in which it is drawn.

I was looking, too, for a little assistance on section 7, because the act purports to deal with members of the Legislative Assembly, and that particular section includes “an employee of a ministry.” I do not think that should be in there because I do not think I have anything to do with it.

**Mr Sorbara:** That brings in a whole new category of people.

**Hon Mr Evans:** Yes, someplace else.

**Mr Sorbara:** The Public Service Act or something like that.

**Hon Mr Evans:** One of the other ones was section 10.

**Mr Sorbara:** Could I just stop you for a moment before we get to section 10? Section 8 is, I think, probably you will agree, the major prohibition in the act. The prohibition against a cabinet minister engaging in business in any respect seems to me to be the one that gives rise to the obligation upon a minister to arrange his or her affairs in the way that has him not in violation of this section. Now, in your experience, has that been a difficult section for some ministers to comply with?

**Hon Mr Evans:** No. I thought the (b) section of 8 should be “actively carry on a business.” Then we have stopped lawyers from advertising and so forth, but if a lawyer or a doctor has bills coming in after he assumes the position of the minister, surely he is entitled to fees on that basis and sharing of profits, but I do not think that he should be actively carrying on a business any more than the practice of a profession or anything else.

We have no provision in the act as to what happens—in other words, there is no penal section in there—if he does not do it.

**Mr Sorbara:** That is, if a minister is carrying on a business or engages in a profession.

**Hon Mr Evans:** If he does not comply with it.

**Mr Sorbara:** But presumably if, as a result of the annual disclosure made, it becomes apparent to you that the individual is carrying on a business, that is something you would report to the Legislature.

**Hon Mr Evans:** But that may be quite a way down the road.

**Mr Sorbara:** Sure.

**Hon Mr Evans:** At the present time it is 61 days or something.

**Mr Sorbara:** Okay. I am sorry; I interrupted you. Were you going to section 10?

**Hon Mr Evans:** I went to 10 because I wanted the files to be exempt from disclosure under the Freedom of Information and Protection of Privacy Act. I think they are, but I would be happier if it was spelled out in the legislation because I do not want to get into a hassle with the privacy commissioner; but unless they are private the whole purpose of this is destroyed.

**Mr Sorbara:** Because you filter the information.

**Hon Mr Evans:** Yes. Right.

**Mr Sorbara:** So you are in fact a privacy commissioner in the sense that you receive information privately disclosed and determine what shall be publicly disclosed.

**Hon Mr Evans:** Right.

**Mr Sorbara:** I think that is extremely good, but have you had requests under the freedom of information act to disclose the raw material of a member's file?

**Hon Mr Evans:** No. Also, I think there should be a provision for an interim commissioner in the event that something happens—incapacity or something like that. Today I feel pretty good, but that means nothing. I think there should be some provision for that. Also, someplace there might be a general clause giving some discretion to the minister.

1550

We have had people in from other provinces, and in two or three of the situations that arose I was asked what I would do and I told them what I would do. It was not in conformity with the act, but you have a situation with that long bundle of paper. I inherited this act. I did not draft it, and I did not draft the paper that goes with it. We have cut it down this last year and we would like to do more, but there are things that come in to me, such as support.

One member—not one member from here but these are two instances from other jurisdictions—said he had been married and divorced and he remarried, but he did not tell his second wife there was a child from the first marriage who was being supported by him. I asked myself: "Whose business is that and where is the conflict? What business is it of the public or his seatmate or anybody else?" That was one where, when they asked me what I would do, I said I would not disclose it. There was no point in destroying his marriage; he was probably having trouble enough.

**Mr Sorbara:** If he is a politician, that is true.

**Hon Mr Evans:** The other one was interfamily. This was a situation where the man had a family of two daughters. One became a radiologist and married a doctor, no children, and was doing very well. The other daughter married a mechanic, had two children, lived close to the grandparents and needed some money, so they prepared to give them a mortgage and to forgive part of it. He wanted that to show in the event of his death and his wife was living. He was afraid that this was going to create problems. The other daughter, while she was doing well and so forth, would wonder, "Why would Father give this one money and not me?" Or a member who borrows from his parents to buy a house in Toronto or elsewhere: What business is that of anybody's?

I have consistently, in my own situation here, not shown those things because, again, that is not my view of what this whole legislation is about as a conflict. When redrafting is done, I would like to be able to knock out some of those clauses that refer to these items. I am only making a recommendation—you will decide it—but I am telling you what my view is of it. Everyone who has come in I have asked them about these things.

The same thing too, I think it might be cleared up that we do not disclose the value. We show bank accounts, certain banks, but we do not show the amount. Some policy people are telling me that I was not doing this correctly. I asked everybody who came in and there were only two who said, "Oh no, I think we should make full disclo-

sure of whatever I have in the bank." One fellow came in and he said, "I have \$147.13 in my pocket, cash." I said, "Did you count that?" He said, "Yes, today. Wasn't I supposed to?"

**Mr Sorbara:** Was that his net worth?

**Hon Mr Evans:** No, he was better off than that. But actually I think it is spelled out. I asked everybody who came in, "Did you feel when this legislation was passed that you may be compelled to divulge the amount of money you have and the value of all your assets in a public declaration?" They said, "God, no, I never thought that."

I think, too, that we should make it clear in the legislation that "private" is one thing and "public" is another. That is not quite clear, in my view, throughout the act. "Private" is what you tell me, "public" is what I tell the public you have, but we do not put any of that in. Otherwise they are going to lie. Human nature being what it is, I think we would have problems.

**Mr Sorbara:** If you have done your review of the act, I think these are going to be very helpful for the committee members in making recommendations to the government on a redrafted act.

My final question has to do with the real nature of divestiture and what that means. You have seen a lot of disclosure statements and you have seen some fairly complicated ones if you have looked at—let us call it what it is—my disclosure statement or Joan Smith's or some other member's. These are pretty complicated financial documents.

**Hon Mr Evans:** Right.

**Mr Sorbara:** So let me put this hypothetical to you: If I own a piece of land that is worth \$1 million and the law requires me to divest myself of that land, let us assume that I am extremely anxious to be in cabinet and I have to sell it but I sell it for \$800,000. I have now taken a \$200,000 loss, but in the 60 or 90 or 120 days or whatever the Premier has given me or the law gives me, I can only find an arm's-length purchaser who was willing to give me \$200,000 in cash and has required that I take back a mortgage of \$600,000. Is it not the case that I have, under the law, as significant an interest in that piece of land as I did before I sold it?

**Hon Mr Evans:** Right.

**Mr Sorbara:** Because I hold a mortgage on it and the quality of my interest really has only changed from fee simple to that of a mortgage holder. That divestiture, if it is going to really mean anything, not only means sale but sale in cash so that there is not any residual interest in the assets being divested.

**Hon Mr Evans:** There is no doubt that this is very difficult—same thing with family corporations.

Years ago when I was practising law you set up an estate family trust to avoid duplication of succession duties. We are out of succession duties for the time being, but it does not seem realistic, if you have a family corporation and yourself, your wife and two children each holding a quarter share, to say that you are going to force the member to give up his one-fourth share over to somebody else



who is far removed from the other three. That is just a figment of the imagination, because the other three are certainly going to talk with the father about this matter.

From a practical aspect it is unwise, because then you are bringing into that family someone with a one-fourth interest as trustee. Maybe he knows very little about it and he is going to depend on the other three in any event, or else he is going to cause problems for the other three. Something, I suggest, should be done about that when the business is not likely to become involved with government. There are lots of businesses that do not deal with government—with a shoe store you are not selling many shoes to the government. These are things that I think one might take an interest in and probably correct.

Complete divestiture is an alternative to some form of trusteeship, but I certainly think it is going to eliminate a lot of people from cabinet positions. I think, too, to require the transfer of a business to a trustee and anticipate that there will be no consultation between the trustee and the settler, you are just expecting those parties to be walking around with the angels. I question whether it is necessary or whether the public actually requires such a trusteeship or accepts it. Proper disclosure and a rigid enforcement of section 9 of the act, I think, should be generally adequate; that is, if you are involved in something you do not vote on it and you get out.

We have done pretty well with people to whom—well, it is not in the act—we have said, “Look, if you have any substantial change in your assets, liabilities and so forth, please let us know,” and they do. In that way we could not wait until the next year to find out whether people were having some difficulties. I think that now that they are getting accustomed to the act they come in and ask more questions.

**Mr Sorbara:** In summary then, a system of ongoing disclosure, in your view, would be the best way to protect against the members knowingly placing themselves in a conflict.

**Hon Mr Evans:** Right.

**Mr Sorbara:** That is, all the world will know if I do this, so I ought not.

**Hon Mr Evans:** You pay the price.

**Mr Sorbara:** Yes.

**The Acting Chair:** Thank you, Mr Evans, for appearing here today. Your information was well rounded and accepted.

Before everyone leaves, the clerk does have something that she would like to mention to us.

**Clerk of the Committee:** I just want to bring everybody's attention to the agenda for this week.

The only change in the agenda is, I am still trying to book two more academics but they will be booked Thursday morning. It does not affect the agenda. Therefore, we are not meeting tomorrow; we are meeting Wednesday morning and all day Thursday.

For next week, the Progressive Conservatives have exercised their option to reschedule their 123 matter to 27 and 28 February. So we are doing clause-by-clause on the 25th and 26th and standing order 123 on the 27th and 28th, which will flow over to the first week back.

The only other thing to mention is that this committee does have to write a report, review and make recommendations with respect to the guidelines governing conflict of interest. The suggestion would be that the researcher summarize everything that happens this week, send it out over the next two weeks to members and we consider instructions to the researcher on the report on 18 March when the House reconvenes.

**Mr Sorbara:** Just on that, are we subject to a time limit as far as conflict-of-interest guidelines are concerned?

**Clerk of the Committee:** No. There were no specific instructions from the House with respect to a time limit.

**Mr Sorbara:** Okay.

**The Acting Chair:** Anything else? Thank you. The meeting is adjourned until Wednesday 20 February at 10 am.

The committee adjourned at 1601.

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Wednesday 20 February 1991

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Le mercredi 20 février 1991

## Standing committee on administration of justice

Conflict-of-interest guidelines

## Comité permanent de l'administration de la justice

Lignes directrices en ce qui  
concerne les conflits d'intérêts

Chair: Drummond White  
Clerk: Lisa Freedman

Président : Drummond White  
Greffier : Lisa Freedman

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday 20 February 1991

The committee met at 1007 in committee room 2.

### CONFLICT-OF-INTEREST GUIDELINES

**The Chair:** I would like to call this meeting to order. There are a couple of things I would like to make mention of from the outset. We have appearing before us today, or rather this morning and tomorrow a number of important witnesses, some of whom are politicians, and perhaps the respect offered to politicians is not as great as would be to other witnesses.

I think there needs to still be some degree of respect to politicians of whichever persuasion. The committee members have just received a copy of some suggestions that I believe came from the Premier's office. These are not directions but suggestions, hopefully attempting to inform our proceedings, not direct them.

### MINISTRY OF THE ATTORNEY GENERAL

**The Chair:** We have with us Howard Hampton, the Attorney General, and Mary Hogan?

**Ms Hogan:** Yes, I am here.

**The Chair:** Thank you, Mary. And Doug Ewart, the director of policy division with the ministry.

**Mr Sorbara:** Just while the witnesses are getting seated, Mr Chairman, I know that the clerk of the committee passed out this document. It does not seem to be signed by anyone. It does not seem to—

**The Chair:** I believe I indicated it was from the Premier.

**Mr Sorbara:** Did he tell you that specifically and did he draft it himself, or does this come from his office or—

**The Chair:** The Chair received the documentation. This is the first I have seen it.

**Mr Sorbara:** Apparently it comes from the Premier. The Premier has not signed it, but we will take you at your word, Mr Chairman, that—

**The Chair:** Clerk, would you like to address that?

**Clerk of the Committee:** I can clarify exactly where it came from within the next few moments.

**The Chair:** Thank you. Mr Hampton.

**Hon Mr Hampton:** Good morning, Mr Chair, and members of the committee. For the record, I want to point out that to my far right is Doug Ewart, who is the director in the policy development branch, Ministry of the Attorney General. To my right is Mary Hogan, who is the new Deputy Attorney General for the province of Ontario. And we have with us as well today Allan Shipley, who is counsel in the Ministry of the Attorney General and who has considerable expertise with respect to conflict-of-interest guidelines, the history, etc. We may, if you feel the need, call upon Mr Shipley if you have particular issues that you want to have addressed.

It is my understanding that the committee wanted to hear from me some information on the development of conflict-of-interest guidelines and laws in Ontario, and I come today prepared to deal with that issue. And if it is acceptable with the committee, I launch into that now.

For those of you who have been members of the Legislature for some time, you will be aware that there is a long history to the regulation of conflict of interest and conflict-of-interest guidelines in the Legislature of Ontario. For those members of the committee who are new to the Legislature, the history is very long indeed and very interesting. In fact, regulation of conflict of interest is both a very new and a very old concept in Ontario.

Prohibitions against holding elected office while being a beneficiary of a contract with the government were enacted as early as 1868, and in 1876 members were expressly prohibited from accepting any fee or reward for promoting or opposing any matter submitted to the assembly. Those provisions that were adopted in 1876 form the basis for section 10 and section 40 of the current Legislative Assembly Act.

An even older convention transferred from the British House of Commons is that members not vote on any matter in which they have a pecuniary interest. This rule is now incorporated in the standing orders of the Legislative Assembly. Perhaps what is new is the terminology and the attempt to develop and expand upon these basic historic concepts.

Recent history probably begins in 1972 when then-Premier Davis responded to concerns about the conduct of Darcy McKeough and Dalton Bales by issuing conflict-of-interest guidelines for his ministers. The following year they were extended to parliamentary assistants. In announcing the guidelines, Premier Davis stated that "they are broader in scope and far more definitive and precise than any previously enunciated by any comparable jurisdiction, federal or provincial, in Canada or anywhere else."

Among other things, the guidelines required public disclosure of interests in land, of share and debt interests in private companies and land, and partnerships and proprietorships. Moreover, with limited exceptions, ministers were prohibited from acquiring further interests in land. Ministers were required to abstain from business and professional activities and to divest themselves of interests in public companies or to place their interests in a trust. Significantly, most of these guidelines also applied to family members of ministers; that is, spouses and minor children. Keep in mind this is the early 1970s.

In November 1978, following some controversy about ministerial contacts with officials involved in the administration of justice, Premier Davis issued further guidelines concerning communication between cabinet ministers and key officials in the judicial system. When the Liberals



formed the government, Premier Peterson endorsed the Davis conflict guidelines in September 1985 and extended them to confidential staff as well as parliamentary assistants. The most noteworthy change made by Premier Peterson was to permit interests in private companies to be placed in a blind trust.

In June 1986 questions were raised about breaches of the guidelines by Elinor Caplan and an 11-day hearing was conducted that summer by the standing committee on public accounts. Questions were also asked concerning another member, René Fontaine's compliance with the conflict-of-interest guidelines and that matter was referred to the standing committee on the Legislative Assembly.

On 2 July 1986 Premier Peterson requested the former Lieutenant Governor, John Aird, to consider the entire question of conflicts of interest and to make recommendations for new rules. The Caplan report, as it was known, was released on 18 September 1986. It expressed concern about the lack of certainty faced by members trying to operate under the guidelines and recommended the development of legislation and an independent arbiter, among other things. The report also recommended fuller disclosure of financial interests.

The Caplan report was followed within a week by the Aird report, which found that in some cases the guidelines were vague, imprecise and even self-contradictory. Mr Aird's report included a draft conflict-of-interest act. The basic scheme proposed by the act was to broaden the disclosure requirements while establishing an independent commissioner to provide advice to ministers. The Aird scheme was premised on the belief that ministers, having fully disclosed their interests, would be able, with the advice of the commissioner, to avoid any conflicts. Openness and avoidance would make divestment unnecessary.

The report concerning M. Fontaine was also tabled about the time of the Aird report. It did not deal extensively with policy recommendations, encouraging only review of the Aird report. The Aird report was referred to the standing committee on the Legislative Assembly on 15 October 1986, but before the committee reported, the Attorney General of the day—and that was Mr Scott—on 27 November 1986 introduced Bill 160, the Members' Standards of Office Act. From the Attorney General's statement on tabling Bill 160, it was evident that the approach recommended by Mr Aird was a major influence on the bill.

The bill was described as having four basic elements: (1) a definition of conflict of interest accompanied by a concise code of conduct; (2) a duty of extensive disclosure of financial interests; (3) an independent adviser on conflicts; and (4) a procedure for investigating conflicts and imposing sanctions. Notable differences between Mr Aird's draft and Bill 160 were the extension of the basic rules to all members, not just ministers, and the substitution of the management, or open, trusts for blind trusts and the provision for sanctions as opposed to political censure.

That bill died on the order paper at the end of 1986, but in the meantime the standing committee on the Legislative Assembly had reported on its consideration of the Aird report. It was broadly supportive of the Aird report but

made additional recommendations such as the inclusion of senior civil servants, reference to standing committee of unresolved allegations of conflict, a provision for penalties, and the need to consider the regulation of lobbying.

#### 1020

On 5 May 1987, shortly after the Legislature resumed, virtually the same legislation was introduced as Bill 23. After second reading in June, the bill was referred to standing committee but again died when the 1987 summer election was called.

In September, the bill not having been enacted, Premier Peterson announced a new set of guidelines based on Bill 23 but applying only to government members.

When the new Legislature returned on 3 November 1987, the bill was reintroduced, with a few modifications, as Bill 1. It received second reading in December 1987 and was the subject of nine days of intense scrutiny in the standing committee on the Legislative Assembly. The bill that finally went to standing committee in January 1988 was substantially the same bill that had been introduced 15 months earlier in November 1986.

During the standing committee hearings, Mr Aird appeared as a witness. He had been serving as interim commissioner under the new September 1987 Peterson guidelines. He expressed some concerns regarding management of personal financial interests, disclosing income of private companies, tracing affiliates and disclosing amounts of personal income.

A number of changes were made in standing committee, many on government motions, but several in response to opposition motions. For example, members were required to disclose not only income from private companies but also the assets and liabilities of private companies. The process for considering the commissioner's report was speeded up, and provisions regarding management of personal financial interests were clarified.

The bill, as amended, received royal assent on 11 February 1988, and was proclaimed in force on 1 September 1988 with former Chief Justice Gregory Evans as commissioner.

Although the legislation that came into effect was in most material respects the same as the initial bill, there were throughout its passage numerous criticisms levelled at the bill by the parties then in opposition. A common criticism concerned the lack of any statutory recognition of a duty to divest interests that could create a conflict. Retaining the interest while abstaining from decision-making was felt not to be adequate protection of the public interest. In the same vein, the bill was criticized for not specifically prohibiting holding contracts or licences from the government.

There was concern on the one hand that disclosure was not detailed enough to permit a real assessment of potential conflicts, and on the other hand that the duty to disclose need not extend to backbenchers and opposition members who were not in a position to make government decisions.

At the same time, it was proposed that the legislation be extended to include parliamentary assistants, confidential ministerial staff and senior civil servants.

As well, it was felt that a comprehensive bill should include provisions regulating paid lobbyists. Concern was

also expressed that the public had no direct opportunity to make and pursue allegations of conflict.

All parties agreed that there was a need for legislation and that legislation should be developed through all-party consensus. The disagreement focused on the extent to which this particular legislation would effectively achieve its objective of maintaining public confidence in the integrity of government.

In considering the development of conflict-of-interest legislation in Ontario, regard should also be had to developments elsewhere. By 1986, every other province had some statutory provision regarding conflict of interest, and they each required all members to disclose their interests.

Federally, in 1984 a task force, co-chaired by Mitchell Sharp and Michael Starr, in its report, *Ethical Conduct in the Public Sector*, recommended that legislation be enacted. However, in 1985 the government issued unlegislated guidelines, *Conflict of Interest and Post-Employment Code for Public Office Holders*. The code applies to ministers and public servants. Among other things it sets out general principles of conduct, requires disclosure of interests, recognizes blind trusts and establishes an office to administer the code.

That code became the focus of national attention with the Parker inquiry into the conduct of Sinclair Stevens. Mr Justice Parker's report was released in December 1987, just as Ontario's Bill 1 was being debated. He had considered an earlier version of the Ontario bill in drafting his recommendations. Although following the Ontario approach in many respects, that is, public disclosure should be the cornerstone, he recommended that federal legislation also deal with apparent conflict of interest. He expressed serious concerns about management trusts, but clearly stated that blind trusts should be abolished.

Two or three months after the Parker report, the federal government introduced the *Members of the Senate and House of Commons Conflict of Interest Act*. This bill was similar to the Ontario act in that it required disclosure and provided for an independent body to administer the disclosure requirements and to conduct inquiries. While there are differences with the Ontario act, the similarities are probably greater than those differences.

The federal bill did not proceed and was reintroduced with minor changes in November 1989. It has not had second reading at this time.

In early 1990 the Ontario conflicts commissioner raised with the Attorney General a number of issues relating to possible amendments to the *Members' Conflict of Interest Act*. The commissioner's concerns were passed on to the leaders of the opposition parties for comment. The comments are reflected in the submission made by the commissioner on Monday.

With the arrival of the new government in Ontario, the speech from the throne declared that the government's first challenge was to earn the trust and respect of the public and it made the development of clear standards of government conduct its first priority.

At the same time the Premier recognized that amendments to the *Members' Conflict of Interest Act* should not proceed without an opportunity for all-party consultation.

Moreover, any alteration of the duties and responsibilities of the commissioner, an officer of the Legislative Assembly, would require statutory authorization. Accordingly, as a first step, the Premier announced an extensive set of guidelines for his ministers and parliamentary assistants, not to supplant the legislation and the commissioner but to supplement the existing legislation until such time as the appropriate statutory amendments could be made.

As Attorney General, I should stress that my interests in these guidelines and the legislation are the same as every other member's: simply to promote integrity and to ensure public trust and confidence. The Ministry of the Attorney General has no proprietary interest in the legislation. Administrative responsibility falls under the Office of the Legislative Assembly. I am pleased and honoured that the Premier invites our advice on these matters, but I realize that this legislation and policy belong to all members, and I look forward to the deliberations and the report of the committee.

**The Chair:** We have, I believe, until—

**Mr Fletcher:** Until 11:15.

**The Chair:** Until 11:15, thank you, Mr Fletcher. I would like to suggest that we do the rotation as we have been, with similar time allotments, starting with the official opposition.

**Mr Sorbara:** Is it clear, Mr Chairman, that each party has questions of the Attorney General and the other witnesses? Is it clear that each of the other parties—

**The Chair:** I would presume that they do, and if the parties fail to use their time, as on Monday, whichever party has further questions can use that time left over.

**Mr Sorbara:** I would like to begin by thanking the Attorney General for agreeing to appear before this committee in its deliberations on conflict of interest. I would like to welcome the new Deputy Attorney General, Ms Hogan, and say to her as I welcome her that she is taking on very serious responsibilities, and I could not think of anyone more competent, I tell the Attorney General, than Ms Hogan to take on those responsibilities as the new Deputy Attorney General.

I did have some criticisms of the Attorney General when he made his announcements. In respect of court backlog, I do not think he could have made any finer move in trying to deal with court backlog and the administration of justice than bringing Ms Hogan down to Queen's Park to assist in the administration of that ministry.

I just want to say to Mr Ewart that it is good to see him here at this committee. We do not see each other as often as we used to, but oh well, it is yet another room at Queen's Park and yet another committee, and we might as well get on with our deliberations.

I want to begin by asking the Attorney General if he could summarize in his own words what the pith and substance of the current act is, the one that now binds all of us as members of the Legislature.

1030

**Hon Mr Hampton:** I think you are asking me to try to summarize—



**Mr Sorbara:** In other words, the law that we have now, Bill 1 as you refer to it, what is its approach to dealing with conflict of interest? What is the heart and soul of the bill?

**Hon Mr Hampton:** Clearly the emphasis is upon disclosure, and then, through the office of the commissioner, to assist members in avoiding possible or potential conflict situations. So you declare what your interests are and then, having declared your interests, as you go forward from there in specific situations you strive to avoid possible conflicts.

**Mr Sorbara:** But just to help out the Attorney General, would it be fair to say that there are really three cornerstones of the current law? That is to say, (1) that there are prohibitions against doing certain things where one's private interest conflicts with one's public duty; so there are prohibitions, sanctions in the act; (2) that really the heart and soul of the act is ongoing disclosure by ministers and I guess by members of their private interests. There is an obligation in the bill to, in an ongoing way, disclose to the commissioner, and through the commissioner the general public, what a minister has in terms of assets and liabilities, and (3) that there is an independent arbitrator of issues relating to conflicts, that is, the conflicts commissioner. Would that be a fair assessment of what the act does?

**Hon Mr Hampton:** I would agree with you that there is a definition of conflict. There has been some disagreement as to whether that definition was adequate. There is an extensive disclosure of financial interests. Again, you will remember from a debate that took place in committee and in the Legislature that there is some question as to whether or not the extent of disclosure was adequate. Certainly the other focus is the independent adviser on conflicts.

**Mr Sorbara:** Right. I would like the Attorney General to advise the committee as to the extent to which the Premier or members of the Premier's office consulted with him directly in the development of the new government's new guidelines in respect of disclosure prior to their being announced.

**Hon Mr Hampton:** There was fairly extensive consultation between the Premier's office, myself and members of the ministry staff. I think we met on probably four or five occasions at least.

**Mr Sorbara:** Did you ever meet directly with the Premier in the development of these guidelines?

**Hon Mr Hampton:** Yes.

**Mr Sorbara:** And would you agree with me that there are really two new departures in the Premier's guidelines? That is, first, in addition to an additional disclosure burden, if you like, the main thrust in the new guidelines is that ministers are required, except under certain circumstances, to divest themselves of private interests that they have. Second, the person to arbitrate as to whether or not those interests have to be divested is not the independent commissioner set up under the act but, in these guidelines, the Premier himself.

**Hon Mr Hampton:** Just to be clear, there is certainly an emphasis on divestment. There is certainly an appreciation that in some situations interests, whether they be interests in land or interests in a particular business, may in themselves create the impression or the perception that a conflict exists. Therefore there is an emphasis on divestment. As I explained earlier in my statement, because these are guidelines, because the commissioner has the duty of dealing with the existing act, the feeling was that, yes, the Premier ought to be the final decision-maker in terms of whether within the terms of the guidelines a conflict exists or not.

**Mr Sorbara:** I will just further ask the Attorney General, on that score then, is he aware of the commissioner's testimony the other day before this committee that no other jurisdiction known to him has guidelines or statutes that require ministers or members to divest of their private interests and that in his view divestiture was, to quote him, "a draconian measure"?

**Hon Mr Hampton:** I am aware of that.

**Mr Sorbara:** Do you have any comment on that?

**Hon Mr Hampton:** No.

**Mr Sorbara:** Are you aware of any jurisdiction that requires divestiture?

**Hon Mr Hampton:** I am not aware of any at this time, no.

**Mr Sorbara:** Do you think it is a draconian measure?

**Hon Mr Hampton:** I can think of situations where divestment may be called for.

**Mr Sorbara:** Could you tell us what those situations are?

**Hon Mr Hampton:** I can think of an example from the context of the part of Ontario that I come from, for someone who has extensive holdings, for example, in mining properties, logging properties, which basically form the heart of the northern Ontario economy, it is very difficult to make any decision affecting what happens in northern Ontario without dealing with land issues, development of timber resources, development of mining resources. So someone who has extensive holdings or even small holdings of forest property or mineral-bearing property in northern Ontario likely would have a problem sitting in cabinet, making decisions affecting even general development in northern Ontario.

**Mr Sorbara:** What about if you are a farmer? Should you be able to sit in the Legislature and participate in deliberations on the milk marketing board or farm income policy or farmer assistance, or should you have to sell the farm?

**Hon Mr Hampton:** I am not that knowledgeable on the mechanics of—

**Mr Sorbara:** You have been here for a few years. You know that we pass legislation and we develop programs to assist farmers. One of the most recent was called OFFIRR. I cannot remember what that stood for, but it was a farm income assistance program. You have sat in cabinet committees now and you know that there are numerous policies

brought forward by the Ministry of Agriculture and Food through the minister for cabinet's consideration, all dealing with the income and viability of farming operations in Ontario. I want to know what your view is as to whether or not a farmer ought to be able to sit in an Ontario cabinet if he still owns his farm and he might potentially benefit by one of those programs.

**Hon Mr Hampton:** Perhaps this will assist you. I can give you specific examples where the perception in terms of the public might be that somebody who holds land and then sits as a member of cabinet making decisions regarding the development of land—and the case that I can cite most clearly would be any type of land development issues in northern Ontario because that part of Ontario is so resource-based, land-based. So you are into a situation right there where the perception might be that a cabinet member, in making any decisions about development in northern Ontario, may potentially be in a conflict situation.

**Mr Sorbara:** So are you saying that the real problem is the perception of the public and not the real issue of a conflict where an individual is trying to benefit himself or herself personally. Is it the perception that is the problem?

**Hon Mr Hampton:** I think we have to keep in mind here that we are essentially, as legislators, part of the political process and that perception in politics many times is just as important as reality. So if members of the public are of the view or hold the perception that somebody has holdings or interests in his private life and he is making decisions that may affect those, then I think we potentially as legislators have a problem.

1040

**Mr Sorbara:** And if it turns out that a group of the public feels that a farmer who has a 200-acre interest down in southwestern Ontario ought not to be making policy that affects, my God, real property tax rebates, farm income policy, milk marketing board policy, that person ought to either sell the farm or stay out of the cabinet of Ontario.

**Hon Mr Hampton:** No, I do not think that is—

**Mr Sorbara:** You said that the problem was perception. What happens if there is an increasing perception that farmers ought not be setting policy that deals with real property taxes, the milk marketing board, etc? If that perception arises, should the Premier develop new guidelines that, in his exceptions to divestiture, require him to make sure that farmers sell the farm?

**Hon Mr Hampton:** I think if you want to take this further out in the spectrum, what you will get into is a situation where ultimately, even if we have a conflicts commissioner, the Premier, who is, again, ultimately responsible for the government, will have to make some of those decisions and may have to say to potential ministers, "If you want to be in cabinet you may have to divest yourself of this."

**Mr Sorbara:** Yes, but I say to the Attorney General that you are the chief law officer of the crown; that in these matters, at least historically up until 6 September 1990, the Attorney General of the province of Ontario was the chief adviser to the Premier in these sorts of

matters, in constitutional law matters, in conflicts matters, in a whole range of matters. But what I am trying to get to is, what is the Attorney General's advice to the Premier on these sorts of things?

Let's go back to the northern Ontario example. If an individual who owns a million dollars' worth of shares in a timber interest or in a forest licence in northern Ontario is elected to the Legislature and he is part of the governing party, ought he to be required to sell his interest in that forest licence before he can sit in cabinet? What would your advice be to the Premier?

**Hon Mr Hampton:** Let me point out to you that in fact the federal code of conduct now—

**Mr Sorbara:** I am sorry to interrupt the Attorney General. I know about the federal code of conduct and I know a little bit about the history and I agree that your remarks summarize that history very well. What I want to know now is, what advice would you offer to the Premier in a situation that I have just presented to you?

**Hon Mr Hampton:** I think that is already clear in the guidelines.

**Mr Sorbara:** I am sorry—

**Hon Mr Hampton:** "Ministers are required to divest themselves of,

"(a) any assets, liability or financial interest which causes or could appear to cause a conflict of interest."

That has to be the concern. I want to say to you that fundamentally this is not a matter of law, and if you approach it from that direction I think you miss the point. Fundamentally, this is a matter of creating public confidence in government and ensuring public confidence in government. In that sense, at some point these judgements become public political judgements as to what the public expectation is of us as politicians and as legislators.

**Mr Sorbara:** I want to say to the Attorney General that the Premier himself sat before this committee and said in the House that he looks forward to incorporating these guidelines into law which will affect the lives of people and will determine the quality and the kind of legislators that we have in this Parliament for years and years to come. So I disagree with him on that point. If you are telling me that we should just do this for public perception, to establish some sort of public confidence, I say to the Attorney General that what he is talking about is trying to protect the rear ends of politicians and ministers and not to do the opposite. In the example—

**Hon Mr Hampton:** With respect, Mr Sorbara, I think we have to disagree fundamentally there. I think what we are talking about here is creating and ensuring public confidence that people can look at our private interests and can look at the work we do as legislators or as members of the cabinet and be sure and have comfort that the two are not too close together.

**The Chair:** You have time for one further question, Mr Sorbara.

**Mr Sorbara:** Okay, Mr Chairman. Then I will just hopefully defer another series of questions till the end of



this hearing if there is any more time. Perhaps there will not be any more time, but oh well, that is too bad.

My last question then to the Attorney General is to plead with him once again to consider my hypothetical and to tell this committee what he would tell the Premier under those circumstances.

The Premier, in his guidelines, places the requirement front and centre, "Thou shalt divest." Then he places after the substantive requirement a series of caveats: undue hardship—the Premier was not able to say what undue hardship was; unless there was sufficient disclosure—I had thought that we had an act which required pretty significant disclosure. Maybe we need more. But I say to the Attorney General, if he is unable to answer that question here before the committee and put more meat on these caveats of undue hardship and the like, or if he cannot agree with the commissioner that divestiture is a draconian measure, that there are lots of individuals up in northern Ontario and farmers in southern Ontario and entrepreneurs right throughout Ontario who will say, when it comes time for nominations as candidates for provincial parties, "I'm sorry. I have to take a pass because I have \$500,000 in shares and their value has dropped tremendously and I could never sell them in 60 days so I haven't got a hope in hell in sitting of Bob Rae's cabinet and, if Bob Rae puts these guidelines into legislation, any other Premier's cabinet." So it is terribly important that the Attorney General give some substance. Tell the people who could or could not qualify. If you leave it as vague as you are leaving it here, anyone who has a business interest will say, "I guess I don't qualify." Does that not appear to you to be a problem?

**Hon Mr Hampton:** I would suggest to you, Mr Sorbara, that the hypothetical situations you created are situations that people in the normal course of real life would be able to sort their way through.

**Mr Sorbara:** Tell me how.

**Hon Mr Hampton:** I would also suggest to you that this committee has a role to play in terms of deciding what some of the terms should be in terms of definition, what their scope should be. This committee has a role to play in terms of deciding whether these guidelines ought to apply to all members.

**Mr Sorbara:** I am referring to ministers.

**Hon Mr Hampton:** I only want to remind you that not everyone who is elected to this House becomes a member of cabinet; that the disclosure rules, the divestment rules perhaps should be much different for backbenchers and for members who are not part of cabinet or parliamentary assistants. And that is really what we should be wrestling with here.

**Mr Sorbara:** But I agree with the Attorney General. I am just finishing my comments, Mr Chairman. I want to agree with him and I want to say to him—

**The Chair:** Excuse me.

**Mr Sorbara:** —that if you could put evidence before this committee, that would help us in our deliberations.

**The Chair:** Mr Sorbara, please.

**Mr Carr:** I will be brief. Mr Attorney General, we have talked with the Premier on Monday about some of the things that you have talked about, the purpose of the legislation, which is to build public confidence and integrity. In our discussions with the Premier we did not use the hypothetical situation; we used the situation of Dennis Drainville. The Premier seemed to be saying that it was okay to do it because he did it as a way of conscience. I was just wondering if you agree with the Premier on that matter: that it is okay to break the law if you do it for conscience, or whether you disagree and feel that that is wrong.

**Hon Mr Hampton:** With respect, I am not sure that that is exactly what the Premier said. As I have read the transcript, what the Premier said was that this is a serious issue that he would want to give greater thought to. You as committee members may want to give some thought to those kinds of situations. You may want to consider, for example, if having been found guilty of a criminal offence ought to disqualify someone from holding a particular cabinet office. You may want to make some comments on that.

I will not go any further into the hypothetical because we can hypothetical ourselves into infinity here. In terms of the political case, you have to acknowledge that an appeal is going forward in this, so I would not comment on it any further than that.

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**Mr Carr:** Okay. I may have misunderstood but the Premier did talk about the fact that if somebody was doing it for fraud where he benefits himself—but this was for the greater good, he did not do it for himself personally.

I was just wondering, in situations like that, since the chief in terms of law enforcement here in this province is the Attorney General, what your thoughts are on this situation if somebody, and we will not use Mr Drainville as an example, is convicted. I am not talking about charges; I am talking about convicted of a crime. Do you believe that they still should be allowed to be in cabinet or a parliamentary assistant? Could you give us your thoughts on that, what you would recommend to the Premier, whether somebody should be, then, not allowed to sit or whether you think they should be, maybe?

**Hon Mr Hampton:** If you sort through this in an analytical fashion, there are charges that I think are not of sufficient seriousness that you would give much consideration to. Someone could be charged with a Criminal Code offence or a trespass offence and convicted; and I think members sitting on this committee would generally agree that that should not bar anyone from sitting as a member of cabinet or as a parliamentary assistant. So there are other—

**Mr Carr:** So your recommendation would be that we should take some charges and say, "Yes, they are serious," but other charges are not so serious, so they are allowed off or would be allowed to sit in. I think that is basically what the Premier was saying, too, to cut right through it. He said that there were some that were so serious that you should not be allowed to sit in cabinet, and those that are not.

I was just wondering, then, what you say to your crowns who are out there prosecuting people, where you say that some charges are more serious than others. I guess my feeling is that it is going to be very difficult to draw the line. I think I used the analogy: if you rob a bank and then give it to the poor, that might be in conscience. You are not helping yourself, so maybe you could sit in cabinet if you did that. My feeling on this issue is that the lines are going to be very difficult to draw. When you are talking about the public confidence and integrity my feeling is that in order to do that you say that the laws of the land are such that anybody who breaks them should not sit in cabinet regardless of what he is, other than the odd traffic violations which may happen.

So what you are saying, just to get it clear, is that you believe there are some charges that are serious enough that you should not sit in cabinet or be parliamentary assistant, but there are other charges that are not serious enough that you could still be convicted of a crime in this province and still sit in the cabinet.

**Hon Mr Hampton:** I think you want to be very careful in trying to set this down in a statute. Let's take a real-life situation. There was a member of the British Columbia Legislature, for example, who was convicted of a bank robbery offence, served time in prison, was able to rehabilitate himself, became a member of the community, was elected not only to the British Columbia provincial Legislature but also to the federal House of Commons, and eventually became a cabinet minister in British Columbia.

Now, I think what is important here is that though the person may have committed a serious criminal offence at some time in his life, the public, who ultimately judge us, decided that this individual had rehabilitated himself or had become a credible member of the community to such an extent that he was worthy of election to the provincial legislature on a number of occasions, was worthy of election and re-election to the federal House of Commons, and eventually was worthy in the eyes of his peers and of the then-premier of British Columbia of becoming a cabinet minister.

So I think the members of the committee would want to think about those things very carefully. If you are inclined to recommend that the conflict-of-interest statute deal with these things, there are a number of issues you have to look at: not only the seriousness of the crime but also the degree to which someone has rehabilitated himself. You might want to consider the moral turpitude of the crime; you might want to consider how long ago it was. When you finally look at all of those considerations, I wonder if you might not want to leave those considerations out of the statute.

**Mr Carr:** What I am looking at is that there are many things where you cannot be involved if you have a criminal record. I guess you still probably cannot practise law with a criminal record. I am not a lawyer but I understand that, so what I am saying is that we probably have higher standards to get into law practice in this province than we do to get into cabinet, I would think.

It just seems a little bit odd to me that we set up different and higher standards for the cabinet, but I will leave that just for a moment and maybe Mr Harnick would like to pursue it a little bit.

**Hon Mr Hampton:** If I may respond, I think they are different standards.

**Mr Harnick:** You saw what the law society did in terms of someone who tried to complete the bar admission course. The law society did not permit him to do that, but that is another issue.

What I would like to ask you, carrying on with what Mr Carr was talking about, is: If you have a situation where—and maybe Ms Hogan is the right person to ask this of because she has been a judge—you have someone who is convicted of a criminal offence and has not indicated to the court an attitude of remorse, an attitude indicating, “Now that I’ve been convicted and I am serving the public in an elected capacity, I refuse to acknowledge that what I did is wrong,” that would indicate to me that the rehabilitation of that particular individual is impossible. Not acknowledging any guilt even after a conviction and at the same time purporting to represent his constituents in a public capacity, what do you do then?

**Hon Mr Hampton:** I think we have to acknowledge that rehabilitation is not a one-instant thing. We are talking about this as rehabilitation and I use the words we used. Rehabilitation is something that happens over a period of time, and so—

**Mr Harnick:** That may be so but I would certainly like to hear from Ms Hogan, because certainly when you are sentencing someone, the idea that he comes before you and acknowledges, “Yes, what I did is wrong,” certainly is a factor you look at in terms of sentencing that will probably cause you to give somewhat of a lesser sentence than to a person who comes before you and says, “Even though I’ve been convicted, what I did was not wrong, and you’ll never convince me.” Obviously you look at penalties somewhat different in both cases, do you not?

**Ms Hogan:** As a sentencing judge, clearly there are a number of factors you take into account. The potential rehabilitation of the accused is always a factor, but again, it is only a factor. You are looking at it in the context of the particular crime of society, of the accused, of the victim.

When I talk about victims here in society, various factors take on different levels of importance. For example, is the accused such that he or she is a danger to society, and what does that say with regard to the type of sentence you may impose? Is it the sort of crime where there is a definable victim, and what does that mean in terms of rehabilitation?

Certainly rehabilitation is a very important factor but it still has to be put in context. I can tell you, having had a number of years of experience, that attempting to sentence people is probably, as far as I was concerned, the most difficult element of being a judge and one where I think it is very difficult to set out strict guidelines and rules because so much does depend on the particular case that comes in front of you. The case that you are raising here and the issues there are very difficult and I—



1100

**Mr Harnick:** Certainly in terms of an elected official it portrays to the public a certain attitude about the judicial system, I would think.

**Ms Hogan:** As I said, you have to look at the context, the overall context; you have to take into account the other factors. I do not think it is the sort of thing you can make a blanket general statement on.

**Mr Harnick:** Now I—

**The Chair:** Is your question coming up?

**Mr Harnick:** Is my time expired?

**The Chair:** Almost.

**Mr Harnick:** All right. If I could just ask one quick and more relevant question, because I did not think that was all that relevant. Dealing with senior civil servants, what initiatives has your ministry undertaken to start drafting either some guidelines or legislation by way of amendments to the Public Service Act that would put senior civil servants in the same position as cabinet ministers in terms of disclosure and now perhaps in terms of divestment? Can we be expecting to see something?

**Hon Mr Hampton:** Just to bring you up to date: Staff at the Ministry of the Attorney General participated extensively in the drafting of the guidelines which the Premier has presented, participated extensively in discussions around those guidelines, and as a result have in fact participated in the drafting of amendments. They are in fact before Management Board now for consideration.

**Mr Harnick:** So we will be seeing some legislation in terms of civil servants and how this conflict-of-interest material will affect them.

**Hon Mr Hampton:** You will be seeing some policy suggestions that this committee may want to comment on, may want to have a look at.

**Mr Harnick:** Will we have the opportunity to see them before deliberations end?

**Hon Mr Hampton:** I do not think so.

**Mr Morrow:** First of all I would like to thank you and the new Deputy Attorney General for appearing before this committee. Obviously for public trust and confidence I think we as a government have to do a lot better than the previous government's Bill 1. Do you feel that conflict of interest should widen to include all MPPs?

**Hon Mr Hampton:** I think you want to recognize the significant differences in terms of the capacity to influence decisions that will exist depending upon whether someone is a member, someone is a parliamentary assistant, or someone is a member of cabinet. Frankly I think that is one of the things that you have to wrestle with. I believe—again, I am going on the perception that I have picked up from the public—the public appreciates the disclosure of all members. I believe the public would appreciate even wider disclosure in the sense that, being aware generally of the complexity of the financial world, the complexity of the business world, the public would appreciate knowing not necessarily the extent of someone's private interests or the magnitude of someone's private interests, but generally

what a member's private interests are, what they relate to, what they touch upon. And in that sense I believe that there should be greater disclosure even for ordinary members of the Legislature.

**Mr Fletcher:** First let me respond to a couple of things that have been said. I resent the remark by Mr Sorbara that these conflict-of-interest guidelines would in some way lessen the quality of legislator that comes into this building. I think it is rather Neanderthal to be thinking that only good legislators come from—

**Mr Sorbara:** On a point of privilege, Mr Chair, but I did not say that. I did not say that at all. So if he objects to it, somebody else said it.

**The Chair:** Please consult before you respond to it, Mr Sorbara.

**Mr Fletcher:** —that only good legislators will come from a certain sector of society. I would like to respond also to—

**Mr Sorbara:** Okay, Mr Chairman, now I would like the member to stop on a point of privilege.

**The Chair:** Go ahead.

**Mr Sorbara:** I would ask him to point out in the record as soon as Hansard is available where I said that. It is not my view that one has to have a certain level of assets, or that there are various qualities of legislators. There are independent legislators and there are legislators that belong to political parties, full stop. Some of them are fabulous and some of them do not do a very good job, and it has nothing to do with the level of that legislator's assets. So I resent and regret and ask the member to retract his comments, because they are foolish.

**The Chair:** Thank you, Mr Sorbara. That is, properly speaking, not a point of privilege, but your comments are certainly on the record and I am sure that they have been appreciated by Mr Fletcher.

**Mr Fletcher:** When we get the Hansard, Mr Chair; and also the case with Mr Drainville—yes, he was found guilty, but he also has the right to appeal under the Constitution and I think that is what he is doing. When someone appeals their case, obviously they do not think they have been wrong and they do not think they have wronged society.

Mr Hampton, thank you for being here today. I am just wondering, do you see that the conflict-of-interest guidelines that we have written on this piece of paper—there are certain principles that lie behind why we have conflict-of-interest guidelines. I am just wondering if you can expand on some of these principles, especially from what the Premier is saying and what has happened in the past.

**Hon Mr Hampton:** I think the first principle that you have to acknowledge, the first element of the general character of these guidelines, is that they are not intended to replace the existing conflict-of-interest act. In effect, they tighten, they broaden, they define more precisely some of the issues that I think the public has expressed concerns about over the last couple of years.

Frankly, they tell members to look at their own situation in terms of their interests, their holdings; they tell members to look at them carefully in all circumstances. Under the

guidelines, I would argue that it is not possible for someone to say by definition: "I have disclosed and as long as I avoid these situations and as long as I avoid circumstances which touch upon the interests that I have disclosed, I should not find myself in a conflict situation." What these guidelines do is to put greater onus, a greater test upon members to look in every situation, to consider carefully in every situation, "How do my past interests, my past private interests, my current private interests touch on the decision I might make here?" Or, "How might the public regard my interests and the decision I might make here in terms of a conflict?"

I think that is a good thing. It is a thing that the public expects of members of the Legislature and certainly members of cabinet and parliamentary assistants, that we have to be, besides satisfying the conflict-of-interest act, that in all cases we have to also be able to satisfy ourselves. The test will be, what would the reasonable member of the public looking at this situation think, what would they expect, what would they conclude? I think that is an appropriate test, and one that will in the longer term put all of us in good stead with the public.

1110

**Mr Mills:** Attorney General, I would just like to touch upon the effects or the lessening effects that conflict of interest would have on me in my constituency.

I would just like to touch on an example that came my way that caused me some great deal of concern. A man and wife appeared at my office complaining about their daughter who was sexually assaulted in a schoolyard. They told the story, and I guess the thrust of the story was that they felt that the policeman who attended at the school had not responded adequately and had asked the wrong questions. Their purpose of visiting me was for me to intercede and call the chief of police and to discuss the conduct of that policeman. I had to say to them: "Perhaps you do not understand that I am the parliamentary assistant to the Solicitor General and I think it would be very inappropriate of me to do what you are asking." So they went away and subsequent to that they wrote a rather pointed letter to me saying that they felt that, as an elected official in my riding, I had let them down, that I had not acted properly.

I had to wrestle with that incident as—in the conflict of interest, I saw that I would have been in direct conflict with the minister had I done what they said. Subsequent to that I had to say: "There is another avenue you have to go." I thought that lessened my effect as an MPP in that riding through this conflict of interest, my perception of it. I would just like to see your comment on that situation, how that affected them.

**Hon Mr Hampton:** I think we have to recognize that as members of the Legislature these kinds of situations will come before us all the time. In effect there is an attempt to deal with that within the guidelines. Guidelines 19 and 20 are intended to provide a mechanism whereby members realize the sensitivity of contacting a police officer or a police chief or a justice of the peace or a judge. Members who appreciate the sensitivity of that—we all should—are given a mechanism by which the issue can

still be addressed and dealt with. That mechanism is essentially to contact the Attorney General with the concern and then ask the Attorney General for the appropriate advice as to how this issue can be raised so that the constituent's legitimate concern can be dealt with, but yet we are very careful to protect the interests of the appropriate administration of justice. That is really what sections 19 and 20 of the guidelines are all about.

In that sense, what the guidelines have provided, I think, are of assistance to members. There is no doubt, parts of the guidelines put a higher duty on us. But some sections of the guidelines also spell out how very difficult situations can indeed be dealt with and dealt with in a way where we all know the rules. There will be equal treatment and the standards of administration of justice will be upheld and will be seen in a public way to have been upheld and met.

**Mr Mills:** Thank you, Attorney General. I went that route in the end, but nevertheless the perception of the constituent was that I was passing the buck, that I was not dealing with the issue right then. You know the procedure, that subsequently we wrote to you and the parents see that as not being an immediate action to what they perceived as a very serious shortcoming in the way it was handled; but I thank you for answering that.

**The Chair:** I think we only have a minute left of the government caucus time. One very brief question, Mr Sorbara.

**Mr Sorbara:** It will be a couple of questions, but they will be brief.

**The Chair:** One of them, sir.

**Mr Sorbara:** I agree with the Attorney General that these guidelines are about honesty and integrity and to give that sense of confidence to the public. The Attorney General, both as a lawyer who I guess has practised in criminal law and is now responsible for the administration of justice in the province, I wonder what he would do if one of his senior ministers came to him privately and said to him that there were ministers in his government who were rewarding their friends. What would you do, as the Attorney General?

**Hon Mr Hampton:** There is in effect a process whereby those kinds of issues, allegations for example, about a member of the Legislature, allegations about a member of cabinet, are referred to the deputy minister and the assistant deputy minister for criminal law.

**Mr Sorbara:** So you would say that is a criminal allegation?

**Hon Mr Hampton:** Not necessarily, but that is probably—

**Mr Sorbara:** It could be.

**Hon Mr Hampton:** That is probably the most appropriate place for it to be sorted out and that, in effect, is the process that is in place. They then, as crown law officers, confer with the police or with whatever other appropriate investigative authorities are there. In that sense, there is an avoidance that there has been political interference or



political input into a law enforcement investigation where ultimately there will be a charge.

**Mr Sorbara:** If that minister, that senior—

**The Chair:** Thank you, Mr Sorbara.

**Mr Sorbara:** Mr Chairman, I have a couple more questions on this line and I am wondering if the Attorney General—

**The Chair:** Mr Sorbara, you took all of your caucus's time plus some, and now you took some of the government caucus's time. I think you have had quite enough questions.

**Mr Sorbara:** May we invite the Attorney General back for some time? Is the Attorney General in agreement with that?

**The Chair:** If that is the wish of the subcommittee, I am sure that could be done. Could we recess for two minutes, please?

The committee recessed at 1117.

1125

**The Acting Chair (Mr Fletcher):** Thank you for being here this morning, Mr Elston. Please sit down, read your name into the mike and be relaxed.

**Mr Elston:** My name is Murray Elston and I am here as the first, I think, former Liberal minister who is sort of given in trade. I feel like I am part of the currency of this committee's activities. I think they get one minister from the new government in exchange for my hide, which I am about to present to you now.

I am not exactly sure what I am supposed to talk about, except that we did speak very generally last week, when I was a member of this committee, about some of the things about conflict of interest. I am prepared to answer a whole series of questions. I did express a purely personal opinion that, as people look to purify the political process or the people who are involved in politics, it is becoming apparent in my view, in any event, that the pendulum has swung quite far. While in days gone by there was very little, if any, surveillance or even care, I suspect, or even thought about looking into individuals as closely as it is now, it has become a very minute examination. I am speaking very personally because I am not here in the sense of representing the party, but merely representing myself as a former minister, and also to provide you with what detail I can about my position as chairman of cabinet, to explain some of the issues that we faced as a government in running a meeting; not to tell you what the meetings were about so much, but just to tell you what sort of problems decision-making came in contact with as we tried to adhere to the letter of the law.

In any event, I believe it has gone quite far and I would express a personal opinion that divestment is a particularly cruel and harsh sort of exactment on people who, even with the best of intentions, may not last any longer than the next election. The year 1987 saw a huge turnaround in members, new members, dedicated members, people who worked very hard indeed and they worked as though they expected to stay here for another term. Of course, 1990 showed that was not possible. Some of those people were

ministers and if some people, having been elected in 1987, had had to sell everything they owned to convert it into cash or something similar to that so that they could become a member of the executive council or a parliamentary assistant, so that they could be seen to be pure or whatever, they could be, at this point, trying to figure out how much money they had left over to try to buy back into their interests.

I find that a very difficult situation to put a person into. I know some of you have run more than once and ran again this time and were elected, but for some people, running the first time is an extremely difficult decision personally because you have so many other issues to deal with. Some of them are family, which I know about full well; some of them are about the security of family; some of them are about the amount of time that you spend in dealing with your constituents and your own personal life. You oftentimes let your personal financial affairs take a second or third seat because that is not what you are in this business to do. You are here to look after the interests of your people, trying to make a contribution, from your own perspective obviously, to the betterment and welfare of the province.

1130

So in any event, I express that concern that we are not here that long, even the longest-serving. I guess right now that would be Mr Nixon. He has been here for about 28 years, I think, since 1962—29 years now. But as a farmer from out in Brant county, he has been able to retain his land base, as it were. I came here as a newly acquired partner in a law firm in 1981 and I ran. In fact, Sunday marked the 10th anniversary of my first nomination for candidature for election to the Legislative Assembly. I was not as hard-pressed as some might be because I was relatively new and I did not have a lot of extensive interests and otherwise; but for those people who have been in business or who have taken a lot of time to work at various places and who have accumulated some capital—because that is the way they are and they have decided to ensure their future, not basically because they do not have a pension plan, but to put it into an investment somehow so they can in the future—making a decision to divest at that stage of life where you are going to have a hard time getting into a second career is a very onerous and rigorous operation.

I do not know why we would want to prevent as open as possible a flow of membership in the Legislative Assembly. Anybody should be able to run, and they should not be penalized for running. The "undue hardship" clause I find kind of interesting because it is almost impossible to put a tag on. I guess if somebody comes in and says: "Gee, I just can't do this, boss. It's unduly hard on me and my family. You know, we're used to living like this, and if I have to sell everything I am going to take a discount of so many percentages on my asset base, and if I'm out of here in two and a half years or four years or if, boss, you don't like me in three months, then it's going to be a really rugged exercise to put me and my family through," because this business, unless you are totally solitary, is not a one-person show. This is a business where it is an extended family. It does not even stop with your spouse and your immediate

family members; it extends a whole series of leaps and bounds right through your entire family structure.

I was interested this past holiday season when I was talking with your government whip, Shirley Coppen, who said that she found it difficult. Every year she has been able to prepare in a certain way for the holidays and this year, of course, she could not. Of course, that is what people in this business find. That conflict in time alone is enough to drive you up the wall, but if you then have to go ahead and divest your assets to get into the business, it makes it even that much more difficult.

What can I tell you about my role as Chairman of Management Board of Cabinet? It was a wonderful cabinet. They were bright, wonderful people, the most intelligent group of people ever found or assembled in one place in Ontario. Can I tell you anything more? Is that too much already?

The meetings are very interesting because the people who are gathered around the table—and even the parliamentary assistants will know this; I think most of you are on the government side—as you go into meetings, it is well known, when you come together after a few months of meetings, where your interests are. You know each other fairly well, in fact, sometimes too well, as you get into those five- and six-hour meetings. Everybody knows a person's bias, both his philosophical and his background rearing and the biases that come from that. So you come as a collective group to anticipate where someone's point of view might arise from. It would not be unusual that if a particular person, let's say someone who owns a farm, was making a point on how poorly done-by the agricultural sector was, there would be a whole series of small catcalls around the table saying, "Bad results in the bean field this year, were there?" And all that stuff is well known and understood so it was very difficult, and in fact is difficult, for somebody to come in and participate in a decision which others knew would solely restrict the benefit to an individual who owned that farm.

You know each other, and this business is one where an individual is viewed by the broader group of society. When you go back to your constituency, it would be unusual if people, having elected a member whose buildings were seen to be run down and looking unusually poor, in six or eight months found that the house was rebricked and the outbuildings were completely painted and renovated, and the tractor, which was a 1949 Case D, was replaced by the most modern John Deere—not to do advertisements for any of those two organizations—but you can understand that the public presence of a member in his or her constituency is such that the electorate gets to know what is happening if there is something untoward occurring. Now, each of you knows that we are paid very highly in this business; in fact I have heard from members of all parties about how highly we are paid, and you can understand that since our pay is known, people can anticipate what you can reasonably afford and not afford.

That brings me to another issue, I guess, which is that you know in cabinet, or you know as a PA, or you know even as a Legislative Assembly person how the person thinks or talks. There is a supervision there. If a person

decides that he or she is going to be dishonest, for whatever reason and whatever propels a person into that, whether it be some kind of financial hardship or difficulties which are unseen by any of us, if he or she wishes, there will be found ways. No matter how tightly you turn the screws down on everybody, and how much you want to be declared or whatever, unless you provide the Conflict of Interest Commissioner with an investigative unit in a, to use the old words, "Big Brother" presence, you cannot guarantee the sustainability of purity, if I can put it in those words.

Each of us is, in my view, honest and not to be presumed to be dishonest; but there are inevitably some cases where people will get into issues of conflict. Although I have talked mostly about financial matters, the conflict can arise from other relationships: providing inside information or providing influence by the propelling of information to friends or colleagues. They need not be family; they need not be relatives; they need not be associates in business. They could be merely friends who get that one step up on the others. That, likewise, is a conflict, and in some ways is more subtle, and in many more ways more grievous, because it delivers power into the hands of people at the expense of the social order in general.

I think I have said probably just about everything I need, other than to say I should finish up on my cabinet chairman's role. I found it difficult sometimes when we were talking about issues which required some expert material. I do not know whether any of you here have seen the cabinet books, but you get a book full of all kinds of stuff and it has interesting writing on it. Actually, maybe I should just go down the hall, if you would let me. I could get one of the cabinet books out of the committee room and bring it back up or something. The Chairman does not want that, but anyway it has got all kinds of writing in it. One of the best defences for politicians is not only the grass-roots visitation to his or her constituency, but it is in fact bringing to bear his or her own common sense, if you have any, in relation to the particular issues that you are dealing with, on the matter so that you are not taken in by people who get really narrow in their writing of the issues.

If a person has experience in an area, and we had several who dealt with, let's say, forestry, it was a concern that those people, because they were intimately knowledgeable, might appear to have a conflict of interest if they sat in too long on any decision which related to the forestry side of things. What it did was it removed the people who were most knowledgeable among us as a member elected to the Legislative Assembly from participating in the decision, and I found that frightful. I found it difficult that a resource was wasted in that way; and from my point of view anything that we could do to clarify those circumstances would be quite helpful. The issue of how far a person can benefit or not benefit on the basis of decision-making is a very interesting one, and I think that you could take yourself far along the continuum and end up with some very difficult or almost impossible questions to answer for yourself.



1140

Just one interesting question, just before I wind up: Where does a person's interest stop when he or she is doing things on behalf of a political party, and where does it start? Because, of course, the welfare of the political party may very well predict the welfare of the individual member. So think about it every time you say you are doing something for the New Democratic Party or the Conservative Party or the Liberal Party, and "It has nothing to do with me." I will tell you, if things go well for the Liberal Party of Ontario, things will go better for Murray Elston, probably in terms of chances of becoming re-elected.

That likewise should bring to your attention the concerns around the Red Hill Creek Expressway, for instance. The strengths of Richard, whom I have a great regard for, because he was elected just after I was in 1982—I was elected in 1981—but if he strengthens the organization through the party structure in Hamilton, there will be a stronger election base for Richard and the rest of the NDP in Hamilton, for instance. Is that a conflict of interest, the conveyance of that information at the expense of others in that social order? Is that a problem, and how do you police that? So do not get yourselves caught up just in the issue of dollars and cents, because power comes in so many other different and subtle ways which are equally as frustrating to an open and democratic society.

**The Acting Chair:** We have approximately five minutes per party.

**Mr Elston:** I should have talked another five minutes.

**Mr Sorbara:** I have three short questions. The first is, I want to ask Murray, during his tenure as chairman of cabinet and managing the deliberations of cabinet, did you ever get the sense that any minister there was trying to further his or her private interests or his or her private bank account?

**Mr Elston:** No, there was nothing in those ways at all. You are really so wrapped up in trying to promote the interests of the organization that you are leading. In my case, I have been Minister of Health; you were Minister of Labour; Gordon, I guess you are associated now with the Solicitor General. But your interests now are so single-mindedly wrapped up in trying to get to know, particularly in the early going, where the washrooms are and where the briefing books are and where the good information is and where the right levers are, that you are taken into that; and people are really trying to promote best interests.

I was interested in Gordon's example of how you get caught innocently in this big dilemma about, "Who do you work for?" You are elected by your constituents and yet you have this sort of semiexecutive, quasi-executive position as parliamentary assistant a number of times when people will get into those types of things—but none of them when people were sort of saying, "If I make this decision this is going to be better." None of that stuff, financially or otherwise.

**Mr Sorbara:** I will always remember the day in cabinet when, up until 10 o'clock in the morning, our colleague Christine Hart, the former member for York East, was participating in a cabinet meeting until 10 o'clock and at

11:30 there was an announcement that she had resigned her cabinet portfolio. It reminded me that through five and a half years as a cabinet member I felt that, at any time from the day after I was appointed, the phone could ring and it would be the Premier or someone from his office on the other end of the phone saying, "The speech that you just gave, or the remark that you just made, or the allegation that has just been made against you is such that I'm going to have to ask for your resignation." Would you agree with me that each of us felt like we served in that capacity day to day, minute to minute, and a single mistake could result in the requirement to resign?

**Mr Elston:** Yes. I was not too preoccupied with that, but I think the sense was that we were always reminded. Certainly Christine's presence up till 10, and then her departure and then a final departure announced at 11:30, had quite an impression on all of us. I think that we all realize that if the Premier believes—or, even worse, if the Premier's staff believe and then counsel the Premier—that you have done something unusually bad, that you are subject to dismissal. That is there.

I do not work like everybody I guess does, but I was always occupied in doing the job and I always actually got good advice from a senior fellow when I first ran in 1981, really good advice. He said basically "Work hard," but he said, "Do what you think is right and then you will know at least one person is happy," and I have actually taken that as pretty good advice and that is how I approached it. But you were reminded that it was not necessarily within your own hands as to how long you survived in the executive council, and it is not how well you do necessarily in 1994-95 that your future will be determined on.

**Mr Sorbara:** The guidelines that the Premier put forward provide for divestiture. In his statement in the House he provided for a divestiture within 60 days. My question to you, Murray, I guess in your capacity as a lawyer—I am not sure how much corporate or commercial law you practised—

**Mr Elston:** Wingham had a huge corporate base in those days. It is not nearly so big now because council maybe is not as good, I do not know. But they are closing plants left and right, actually.

**Mr Sorbara:** But it seems that even the smallest of business interests, whether it was an interest in a hardware store or the interest in a small contracting firm, if put on the market, could take a year or perhaps two years or even more to sell, depending on market conditions and the terms that were needed in order to survive. Is that not your experience in dealing with—

**Mr Elston:** Yes. It is a difficult thing for people to do. It is particularly more difficult for a person who owns a small business, as opposed to having large assets. For instance, right now is a particularly good example for us to take to heart. Having been elected, there are a number of people I know who are ministers—not a number of them, but some who I know who have small businesses that are getting smaller, first of all, because they are working down here all the time. How do you sell a going concern when the going is getting tremendously more difficult and when,

in fact, maybe in 10 months it might be a little bit better, a little easier to sell it?

**Mr Poirier:** Or a lot easier.

**Mr Elston:** Or a lot easier. I think Jean is completely right. I find it very difficult where a person basically lives his or her life solely—the hardware business is a good example—in that shop from maybe 6:30 in the morning when they are doing the repairs till maybe 8:30, 9:30, 10 at night. I do not know why they give up all those luxuries to run as a member, but people get committed to making some changes. They are offended by a regulation or they do not like the way this is working or they have had concern about education, and it has nothing to do with that person, but all of a sudden their entire family's existence—which is really what small business is about, it is a life-style, just like farming is—is to be put on the block. There are all kinds of people who go around looking for bargains and they love to see people who are in a pressure situation. You will be able to sell it, but I will tell you, you give away an awful lot of your life in the meantime; and that is what is difficult about this thing and that is why it will, I think, be more onerous for anybody who thinks that they have an executive position in store for him or herself or even a PA's position. That makes it pretty difficult.

**Mr Sorbara:** And you do not get it back if you get thrown out of cabinet—

**Mr Elston:** In fact it becomes more difficult, because what happens is that when you are under pressure they buy at lower prices, and when you want to come back into business—because you have to work at something after this life, generally; there are only maybe one or two people who—

**Mr Sorbara:** Except for you, Gord.

**Mr Elston:** —who are in an exceptional and very independent situation—they are going to ask for top dollar when you go back out, and so it is difficult.

**The Acting Chair:** Is that it?

**Mr Sorbara:** I am done, yes.

**Mr Elston:** Were those only two questions?

**Mr Sorbara:** There were three, two and a half.

**Mr Carr:** I just had a quick comment. I thought it was a good analogy, it seems, with the pendulum swinging. I think in the past the perception has always been that you had to be very rich and influential to get into this place, and now it seems to be swinging the other way. I was also very interested in your comments of—not even just personal monetary, but really your job does in a lot of cases depend on what happens with your party, and by furthering your party you are really furthering your own career. That was just one of the things that I wanted to—

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**Mr Elston:** I think most politicians, by the way, understand that. If you are partisan, there is a corporate existence there, just as there is a sort of corporate existence for government. A very interesting episode in my life was when I was the environment critic and Andy Brandt, who was the leader of a party whose name I have forgotten at

the moment—he was then the environment minister for that party. We were down in the States, and Brian Charlton was with me and Andy. Andy had to go off and sign some agreement with the governor, or whoever, of Michigan and left us down in, I think it was, Springfield. I was seen to be the official opposition rep, the ranking Ontario politician, and I ended up having to defend Ontario's environment record, which was a little tough at the time, against this onslaught by some very high-profile US senatorial people, so I was the interviewed person and Andy never forgot it.

There is a corporate existence to us beyond just the partisan in that stage. You kind of switch your gears, if you can understand what I say; and when we go outside of Ontario there is an Ontario existence which we would promote. In Ontario we are probably going to break back into the partisan existence just a little bit more, and then as members of the Legislature we have this sort of collegial existence which transcends the partisan. It depends what the issues are that you are dealing with at the time. It is a very, very fine line that we walk all the time as to what is happening. There is no question that, when I go out and speak to a group of citizens, I am not going to be promoting the New Democratic Party necessarily, although I have said some nice things about some members who will remain nameless because this is Hansard-recorded, of course. But it is a fine line. We have a series of obligations and duties and if you are pursuing those there are going to be some benefits: We are going to get elected if we do a good job.

**Mr Carr:** In your capacity as a member of the Liberal Party—and I guess you have had much occasion to try to recruit people to run over the past few years—has it been a big stumbling block, do you run into a lot of people who say, "I am a big Liberal, for whatever reason, and I want to run"? Are you finding many people that are saying, "I am not interested in running because of some of the things that are already in place"? Are you running into a lot of that at all?

**Mr Elston:** I think most people were like I was. When I ran in 1981 I was out of law school about four years, a little bit more, had just become a partner in a law firm, purchased a house a year or so before that, and was quite happy. People came and said, "Will you run for us?" because our sitting member in those days, Murray Gaunt, who was extremely dedicated and a great member, had decided to retire. If people had asked me in the preceding December, "Will you run for the nomination in February?", I would have said, "No, I was not interested, we had a good member," and all that sort of stuff. When it comes right down to it, people sort of come up to you and say, "You are a Liberal, you know that Murray Gaunt is retiring and we think we have a better chance in winning with you, will you do it?" That was it, I did not know anything, I had no idea what the pay was when I ran, I did not know what the benefits were. I had never been in the Legislative Assembly of Ontario; I had been around the outside of it, I thought I could do something and I thought I could do a good job. After that, that was totally it, I had no barriers.

Right now, if you asked a person between 1990 and 1994, when the election rumours start getting a little hot,



"Are you going to run?", I suspect you will find people will say: "No, who wants to do this, who wants to have your public life profiled in a way that it is? Who wants to be drawn out all over—who wants to suffer the chance of divesting everything I have worked for for 35 years or 25 years to build up, and my family?" They would also say, "Who wants to go through it and have everybody dump on you?"

Right now the biggest impediment to running politically, I would suspect, other than for the real diehard partisans, is the fact that the public is not particularly keen on politicians, and even though some people were elected as non-politicians in 1990, once elected you are all politicians and will be held accountable in that sort of haze that has cast itself all over politicians. That will be the biggest impediment at the moment, I think.

**Mr Carr:** I understand what you are saying because my wife is still trying to figure out what to tell people I do for a living, because she is too embarrassed to tell anyone I am a politician. I ran under the same thing and so it is very difficult, but I appreciate your coming forward—

**Mr Elston:** That is a very important part of this. Your question was a good one, because you do not want to raise the profile of the impediments to the extent that it takes away the ideals that people have, that they base their opinions on, that they want to promote in public office. This Legislative Assembly is a big meeting place where our society is trying to grapple with some of the biggest issues of the day. If we want to propel everybody into believing that we do nothing but sit around here and ask ourselves if one of the other members' has his or her wallet open to get money, it changes the whole aura of this meeting place. That is what this is, it is a meeting place.

As you talk about conflict of interest, you have to understand that politics is the art or science—I would say art, probably—of resolving disputes with respect to interest. There are not any of us who come here without interest. You cannot run a place of people who will make good decisions if you are disinterested. It just does not work. We all have some kind of interest. You cannot come up with a group of people with the best interests of society at heart as they sit in that meeting place to resolve issues if you demand that everybody be devoid of any sort of interest. It is not just financial.

**Mr Mills:** Thank you, Murray. You came here and you told us, really opening yourself up honestly, about how you felt about it, and I appreciate that. I know that all of us are suffering from this political business. One day I was at home and my wife said, "I have not gone and got the mail today," and I said, "Well, I will slip up and I will get it on my bicycle." So I was cycling up to the village and the first guy that saw me said, "We are paying you to work for us, what are you doing here?" It has made me sort of paranoid now that I do not go out on my bicycle. I was going to do all kinds of things. I was going to buy a new car and I think, well, they are going to say, "Look at that, he has just got in, he has got the money and he has got a new car." I was planning to do that anyway, and I am scared to death—

**Mr Elston:** Well, that is what you tell us for the public record now.

**Mr Mills:** No, no. I have a philosophy, Murray, that not only do we have to be honest, but we have to appear to be honest in everything that we do. To get to the question, I possibly am here on the most peculiar of quirks. I took my wife to the dentist and it was hot and I walked around and asked a few questions. We have often thought, if she had not gone to the dentist that day this would not have happened, and that would not have happened and we would be in Florida now, nice and brown like Dave Cooke.

I did not have a business to get rid of, but I am thinking of my colleagues who have gone that route, as parliamentary assistants, to get rid of a business, realizing the tenure of a parliamentary assistant is precarious, to be generous, I would think. In cabinet, in your previous role, did you know or did anyone indicate to the Premier of the day, Mr Peterson, that they could not accept a position or become a parliamentary assistant because of the implications of giving up—I had a friend in the last government, Bruce Owen, whom you probably know; we served on the council in Barrie for years together, and that gentleman lost a law practice over it. I am just wondering how—

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**Mr Elston:** Actually, Bruce is a good example of what I just talked about earlier where you have to—I mean, it is very difficult to keep two going.

**The Chair:** For the purposes of Hansard, would you identify this personage?

**Mr Mills:** Oh, he was the Liberal member for Simcoe Centre. Paul Wessinger took his place. Did you know of anybody that refused to hold office because of these implications?

**Mr Elston:** Of course, we did not have a divestiture, but I can think that after people went through the process of having to set up trusts and other things, some of our members who were more extensively connected in business incurred tremendous costs in legal fees, which we talked a lot about last week in another area, legal fees and then accounting fees. And then they had, in setting up their trusts, the expense of maintaining the trust companies' involvement as a trustee. And nobody pays for that. It is paid for, hopefully, out of the assets. You hope maybe they will do a good job for you and they can pay it so it is not a net cost. But it is a net cost.

I felt quite badly about some of the attacks on a couple of our colleagues who resigned. Some of those people who were accused, I felt, unfairly, incurred huge, expensive legal bills to do things that really did not have to be done. And there was an unfairness about it and there was a tenacity, a pursuit which I felt hard-done-by.

Greg mentioned before, did you feel that you could lose your job at any minute or that type of thing, that you could be out the door? I was not so affected by that as I was affected by what appeared to be the pleasure of the hunt that I saw in that Legislative Assembly on some of my colleagues who were good people, who could have been making piles of money doing other things, and they ran and were elected for a base pay of \$41,000 when that

did not come close to what they could have been doing. It was that cost. And that, I think, affected me most.

I did not know of people who actually said to the Premier, "I'm not going to serve." I would not be party to that in any event. That other I did know about—

**Mr Mills:** I am trying to get some feedback about this.

**Mr Elston:** Sure.

**Mr Mills:** And I just wondered, you know, if after the fact, anybody said to you, "Well, I could have been this and that, but I didn't."

**Mr Elston:** No, I think at that point it has gone beyond. There may be a personal confidence given to somebody who is much closer, but none that I knew of.

**The Chair:** I think we all know how you have been forced to divest yourself of your retirement in order to seek public office.

**Mr Elston:** I know. The very interesting problem, though, associated with this is that we tend to think about stocks and bonds, and we tend to think about real estate which yields income or a business as yielding income. Technically, though, if you are going to divest yourself, ought you not to be taking yourself right out of every pension plan? Should you not take that out and put it into a blind trust or something, divest yourself of all activity which is in OMERS? OMERS is, in a big way, in the real estate business in downtown Toronto. The way Toronto goes, the better it is going to be. The public service pension is in real estate, and it can now, like everybody else, go outside of Canada; and eventually up to 20% of their stocks and bonds can be held in assets in the US. We are dealing with legislation all the time that affects the pension plans of teachers and public servants directly. But we also manage—at least we develop all the regulations for—all the private pension plans in Ontario. So if you happen to have a pension plan with GM, the rules and regulations made by somebody in cabinet or even as a PA in the Ministry of Financial Institutions can be very beneficial, but beneficial in general, to the whole group in there; but you could be one.

I like Gord's example. I was going to buy a car, but I felt I should not. I think that is a very big problem. But there is also this other fine line, because people do not expect their member to appear to be impecunious. So you have to develop the happy medium somewhere.

**Mr Carr:** Buy a new bike.

**Mr Elston:** Absolutely.

**The Chair:** Thank you very much, Mr Elston. Some excellent comments.

IAN GREENE

**The Chair:** I would like to call upon Professor Ian Greene from York University. Professor Greene, welcome to our committee. As you know we are discussing conflict-of-interest guidelines and we look forward to your input. We have approximately half an hour, although things do tend to stretch out if people get terribly interested. So please feel free to start whenever you are comfortable.

**Mr Greene:** I understand you would like me to make a few remarks and then you would like to fire some questions at me. Lisa Freedman mentioned that she had problems with an article that I had written on conflict of interest and the Constitution for you. Unfortunately, the editors screwed up and the final paragraph was incomprehensible. So I have got copies of what the final paragraph should be.

**The Chair:** I think it would be somewhat taxing if you were going to suggest that politicians read the entire article.

**Mr Greene:** I used to be a minister's assistant in Alberta so I did the reading for my minister.

Just one general remark following on from what Mr Elston said: It seems to me that part of the problem—and we are dealing in perceptions when we are talking in conflict of interest—is that the general public does not understand how the political system works very well.

I teach political science and public administration at York University, and every year after my students take a basic course, say, in Canadian government, they say: "Why didn't we learn this in high school? Why didn't they tell us?" One of my students was so concerned that he wrote a letter to the Ontario Minister of Education saying, "Why don't you teach us these basic facts in high school?" She wrote back saying, "There are many optional courses which you could have taken." I am sure it was an assistant who wrote that. But anyway, I think that dealing with conflict-of-interest rules and so on is part of the problem; the other part is making sure that we have an educated public.

I am going to throw out perhaps a rather different definition of conflict of interest for your consideration. I think that a conflict of interest is a situation in which a public official cannot reasonably be expected to act impartially because the situation involves personal considerations. Often these personal considerations involve the possibility of personal financial gain or financial gain for a family member. But they might also involve other factors, such as the desire to do a favour for a family member or a friend or a party worker, or the desire to improve the financial resources of a political party.

The purpose of conflict-of-interest rules basically is to promote impartial decision-making in the public sector. If a public official is in a position to make a financial gain by exercising public responsibilities, he or she could not be considered impartial. Similarly if a public official is in a position to do special favours for friends, he or she could not be considered impartial. Impartiality is important in the western democracies because of our belief in social equality. Everyone has a right to be respected and to be treated as an equal. Therefore we want administrative decisions to be made impartially. We do not want public officials to enrich themselves, that is, to get special advantages at the expense of the public. Public officials such as cabinet ministers are there to serve the public, not to enrich themselves or their family or their friends or their party.

The principle of the rule of law developed from the principle of social equality, although our concept of social equality has broadened considerably since the rule of law became a constitutional principle in England back in 1688.



The rules prohibiting conflicts of interest have actually been around for a long time, but most of the old rules concentrate on punishing personal gain from public office after it has occurred, or preventing the most obvious conflicts of interest such as a cabinet minister arranging a contract between his or her own private company and his or her department.

The Canadian Criminal Code has always prohibited cabinet ministers, federal or provincial, from the granting of public office favours in return for gifts. Every province has a Legislative Assembly act which prohibits members of the Legislature, including cabinet ministers, from entering into contracts with the government. And these provisions have been carried forth into the new conflict-of-interest acts which have been passed during the last 10 years. Every province now has a special conflict-of-interest act, except for Saskatchewan, Alberta and Quebec.

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But the old rules were fairly effective, I think, in preventing the most serious corruption by cabinet ministers and members of legislatures. But beginning in the early 1970s, Canadians became concerned that the rules did not go far enough. There were a number of instances where cabinet ministers did not contract with the government or make personal gains, but in which people questioned their impartiality because of the possible impact of their administrative decisions on the businesses they were associated with, or that their friends were associated with. People also began to object more strenuously to ministers who did special favours, not just for themselves, but for their friends and their relatives and party workers.

Another issue which became prominent concerned cabinet ministers and public officials resigning their positions and then the next day accepting a well-paid position for a private company which could make use of the official's privileged knowledge. I think that this increased public concern, beginning in the 1970s, resulted from two factors. First of all, there was more demand for social equality as a result of the civil rights movement in the 1960s and the 1970s. Second, I think the Watergate scandal created a demand for tighter political ethics rules in the United States, and this had a spillover effect in Canada.

So in addition to the traditional conflict-of-interest rules in the Legislative Assembly acts and the Criminal Code and so on, governments began to create conflict-of-interest guidelines for cabinet ministers. Trudeau issued guidelines for his cabinet in 1974 but they were not actually made public until 1979, when Clark became Prime Minister. Conflict-of-interest guidelines for cabinets appeared in most provinces in the 1970s, including Ontario. The emphasis on these early guidelines was on divestment: Get rid of any assets that might get you into a conflict-of-interest situation. Other assets had to be disclosed, either confidentially or to an official.

The guidelines were usually written in fairly technical legal language, and after every conflict-of-interest scandal they were beefed up and they became more technical, so that anyone would have difficulty following them, including most lawyers. Not only did ministers have to avoid conflict-of-interest situations, now they also had to obey the

guidelines. A number of ministers violated the guidelines by not fully disclosing their assets. I think this was often because the rules were so complex that they did not understand them. Every time the minister broke the guidelines, the guidelines were beefed up some more and there was more chance to break them.

**Interjection:** A vicious circle.

**Mr Greene:** A vicious circle, yes. Of course, we are in a situation in Ontario now where we have a Members' Conflict of Interest Act, which, instead of the old rules, instead of emphasizing divestment, emphasizes disclosure and recusal—that is, members must disclose their assets to a conflict-of-interest commissioner. The ones that are likely to get them into trouble are publicly disclosed and they are expected to withdraw from situations that might be conflict-of-interest situations, rather than divest their assets, in most cases. I think this new disclosure-recusal approach was a response to the fact that the near-divestment of assets did not seem to be enough and, as Mr Elston mentioned, sometimes discouraged people from participating in politics. I think we can regard all of these conflict-of-interest rules as experiments for promoting higher levels of impartiality and equality, and so periodically they have to be evaluated to see how they are working. Are they really serving the function for which they are intended?

The other element of Ontario's 1987 legislation, which came into effect in 1988, was the creation of the Conflict of Interest Commissioner. This was the first type of ethics commissioner created in Canada. I think it is a marvellous innovation. I think that it helps members to cut through the complexity of the rules. The commissioner is there to explain what they mean and to explain what a conflict of interest means. British Columbia has recently followed Ontario's lead. I understand that a number of other provinces are considering having such a conflict-of-interest commission, and the federal legislation, which was introduced in 1988, would create a three-person conflict-of-interest commission. That legislation has not yet been passed and probably will not be unless there is another big scandal.

The Premier was critical of the disclosure-recusal method of preventing conflicts of interest in the recent legislation, so he has introduced some guidelines that I have had a chance to look at. When I look at them, it seems to me that they seem to be very sensible. They recognize that higher standards of impartiality are appropriate for cabinet ministers.

Legislators in general need to be impartial. They cannot use their office for personal gain, they are not supposed to use their office to aid their friends and family members and so on. But ministers have additional responsibilities under the law. They have to make impartial decisions under the law. So it is reasonable to suppose that higher standards are required of ministers because they wear two hats.

I have just a few suggestions because that is what political scientists are paid to do. It seems to me that the fundamental principles in the Premier's guidelines could stress the importance of impartiality and equality, because it



seems to me that that is what the rules are all about. If cabinet ministers focus on this issue, that, "When I'm making decisions under the law, I have to be impartial and I have to appear to be impartial," the rules are all there to promote that principle, it might help them to follow the rules more easily.

It seems to me that consideration could be given to having the guidelines cover not only spouses and minor children, but what about former associates, former business associates, friends and other relatives? If these others are not mentioned, there are some potential loopholes.

I think the section on judges and administrative tribunals is excellent. It needs to be in the guidelines.

I have some questions about whether it is really necessary to divest to the extent that the guidelines demand, particularly with regard to land. I know that under Premier Davis cabinet ministers were required to divest themselves of land because conflict-of-interest situations often developed with regard to the purchase and sale of land. Once again, I think we have to regard the rules as experiments to promote impartiality. Under the old rules, where you did not have to divest yourself of land but you had to disclose your interests, were there any serious breaches of the rules? Were there serious conflict-of-interest situations that developed? I think Mr Justice Evans would be in a better position to advise with regard to that than I could.

With regard to guidelines in general: At one point or another, I think every Premier in Canada has had guidelines. One of the problems is that the Premier enforces the guidelines, and what happens if the Premier is accused of a conflict-of-interest situation? Who then enforces the guidelines? This is where I felt that having a Conflict of Interest Commissioner in Ontario was far better than in some other provinces and in the federal sphere where you had the first minister trying to enforce the rules.

The other point that I would like to make is that I think, in general, Ontario's conflict-of-interest rules are the best in the country even without the guidelines. I think the guidelines make them even better. They are by far the strictest in the country right now, but it is important to dovetail the conflict-of-interest regime with rules on election financing. Perhaps too much attention is being paid to making the conflict-of-interest rules absolutely perfect and not enough attention is being paid to conflict-of-interest situations that could develop as a result of campaign contributions.

Ministers must not only be impartial with regard to situations in which they can gain personally, and with regard to their family members and their former associates, but also with regard to people who have contributed to their party. So those are my remarks.

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**Mr Poirier:** I am very glad about your observations as to what we already have now and what is proposed for the future in Ontario. After hearing Murray Elston's insight as to what he has lived through, and after hearing what Gord Mills, even though he has been recently elected, is already living through, as to perception of what we are and what we have or do not have, obviously what Gord Mills has lived through, without even being a minister or member of

cabinet, is true for all of the members today because of spillovers elsewhere. When I see a politician somewhere being involved with this and being accused, like some of the former Liberal cabinet ministers were in the past, even elsewhere outside of Ontario it always has a spillover. People always put all of us in the same boat no matter which party we belong to. We are all guilty for a lot of people unless we prove ourselves innocent.

I like what you said about the divestiture because I believe that even if you do not have a darn thing, if you get rid of everything, if people want to perceive that you are in a position of conflict of interest, they will do so regardless of where you fit, what you have done or not done, what you are, who you are. Would you be able to evolve a bit further as to that aspect of perception? To what level should we be victim or afraid of what people perceive if they choose to perceive something negative independently of what is there or not there for us?

**Mr Greene:** You have got to sort of distinguish between the role of the cabinet minister as trying to promote the party's platform and therefore hiring assistants who have been good party workers and so on—these are political types of decisions—and decisions that are made under the law where the minister must be impartial. He cannot be perceived as promoting the party or giving favours to friends or promoting his or her own personal interests. So when the minister is making decisions under the law, or involved with situations that are under the law, I think the minister should be constantly asking, "Could I possibly be perceived as being partial in this situation? If so, what steps could I take to make absolutely certain that I appear to be impartial when I am making these decisions, that I actually am impartial?" I think if that question was first and foremost rather than have it follow 20 pages of rules, ministers are likely to avoid these embarrassing situations.

In addition, I think opposition members, when they are making accusations of conflict of interest, have to be very careful about the damage this could do if the accusations are wrong. I think it would be very useful, before such accusations are made publicly, if for example they check with the party whip: "I suspect that so and so is in a conflict position. Would it be wise to make this public?" Several heads are usually better than one.

**Mr Poirier:** One more very quick one. I really do not want this to sound, and it is not said in a partisan way, but you mention that the law as we have it right now is Canada's strictest, and that seems to have been your perception also. If you had a mandate to look at Ontario's situation right now, what would you do with it? Would you leave it? Would you make it tougher? This is very non-partisan. I do not know what your affiliation is, but how would you feel about it if this were given to you?

**Mr Greene:** I do not have an affiliation, by the way. I have voted for every major party at some point in my career. Not in the same election, though.

**Mr Poirier:** If this was solely on your shoulders and your mandate, what would you do with it?

**Mr Greene:** Can I answer that question by backing up to the situation where we had the new legislation? It



emphasized disclosure and recusal more than divestment. As soon as that legislation was being considered, one of my former professors at the University of Toronto, Ken Bryden, wrote an article in the *Globe and Mail* in which he was very critical of the lack of emphasis on divestment. I guess my feeling at that time was, "Let's wait and see what happens. We have a Conflict of Interest Commissioner who is there to advise members about how they can avoid conflicts of interest. Maybe because of that we don't need so much divestment. Let's wait and see what happens." Now that the Premier's guidelines are in effect and there is more emphasis on divestment I guess I am tempted to say, "Let's evaluate what has happened during this period where we did not emphasize divestment." I would be very curious to get Mr Justice Evans's views on that, but let's also evaluate what happens under the new regime. Does that cause substantial hardships to very many people or does it really help to reduce the incidence of conflict of interest? Let's evaluate the whole thing two or three years from now and see which regime seems to be working the best to promote impartial decision-making.

**Mr Poirier:** What would happen in the meantime if somebody did really suffer a horrible hardship and a horrible economic cost in the next three years? How do you repair that damage? How do you compensate?

**Mr Greene:** It seems to me that with regard to the issue of land, there is not an escape clause. There is an escape clause with regard to other types of investment, I think, but with regard to land it seems to me that you have to get rid of it. Is that the case? Therefore, I would hope that there might be some kind of an escape clause with regard to land also built into it, with regard to real bona fide situations where people, under current economic situations, would lose a lot—it would cost them a lot to be a cabinet minister.

**Mr Poirier:** Are you afraid that the current guidelines might create that kind of fear? What do you think?

**Mr Greene:** The possibility is there. I do not think for very many people, but it might be there for one or two.

**Mr Poirier:** Fair enough.

**Mr Carr:** I have a question regarding perception. Following along the lines of the last question, it is my feeling that even if we put in tougher guidelines, an incident like what is happening now in British Columbia with the Premier—the perception out there will be, even though we have the toughest situation, we are all going to get grouped together and all politicians will be thrown together, of all political stripes. I was just wondering if you had given any thoughts to recommendations, how to communicate it to the public. You said we have the toughest laws anywhere now. Have you given any thought as to how we are going to change the perception of the public so that when we put the toughest, and with these guidelines, even tougher—that people still are not saying we are all alike because of incidents in BC and wherever else? How can we communicate this so that we change the perception, or can we?

**Mr Greene:** Yes, I think that members of the provincial Parliament could do a lot to change public perceptions.

**Mr Carr:** I am sorry. Could you—

**Mr Greene:** I think they could do a great deal to change public perceptions. For example, I think that literature could be prepared explaining the conflict-of-interest regime in Ontario in a very simple way, in one or two pages, in pamphlets that could be given to MPPs when they go to meetings. In their talks with high schools, with their constituents and so on, they could stress the importance of integrity, of the public service ethic in getting involved in politics, rather than getting involved for personal gain. This has been my situation working with elected politicians, that most are there because of the public service ethic, regardless of what party they are in. I think this needs to be stressed. In their public speeches they could explain very simply how the system works, emphasizing the principles of impartiality and equality and, I suppose, also emphasizing that there is no perfect set of rules, and that the rules we have now are there to promote impartiality and equality, and they will evolve as time goes on to reflect these ideals in a more effective way. This does not mean necessarily making them more complex. It might mean making them more simple.

**Mr Carr:** One last question, just with regard to that: These guidelines obviously are a priority of this government and I wondered if you had some thoughts on the perception out there, with all the other issues that are out there, the economy and numerous problems that are facing this country and this province. Is the conflict of interest a big concern of the public as you see it? Is it something that should be pushed to the forefront? Maybe you would say, if they do not have any respect or public confidence in the integrity of government it will not necessarily follow that we have any integrity in what we do in other areas. Do you see this as a major issue now that needs to be addressed in this province?

1230

**Mr Greene:** Yes, but in general terms I think the issue of the integrity of politicians is a major issue. I have certainly found this not only from talking to students, but when I write things about conflict of interest the media are tremendously interested in these types of issues. According to surveys that have been done, the public does not have a great deal of trust in elected politicians. They have far more trust in judges.

**Mr Poirier:** So they should.

**Mr Greene:** This is why the Charter of Rights is so popular. It is because it is a transfer of power from these dishonest politicians to these very honest and trustworthy judges, and that perception needs to be changed—not the perception about judges. I think it can be changed, not only with regard to ensuring that cabinet ministers, for example, do their best to make impartial decisions. I think very often cabinet ministers do not benefit themselves and their friends any more. The rules have evolved so they do not do this any more, but they do benefit their friends in the party a lot. Patronage is something that the public is very much concerned with, so when cabinet ministers make their decisions they have to bend over backwards to ensure they are not making patronage decisions under the law.

That is one thing that they could stress in their actions and in their public speeches. Second, with regard to campaign financing, I think it has to be stressed that people are donating to political parties to promote the public interest, not to promote the interests of their particular company. If those two issues are stressed over the next 10 or 20 years, I think the public's perception of politicians might change.

**Mr Morrow:** God, that is a long time to go, 10 or 20 years. On page 238 you stated the most effective public organization will operate according to an impartially administered set of rules instead of patronage or social class. How would specific conflict-of-interest rules and regulations make the ministers of Ontario more effective?

**Mr Greene:** How would the conflict-of-interest rules make the ministers more effective?

**Mr Morrow:** Specifically.

**Mr Greene:** Specifically. When you read the rules right now, both the legislation and the guidelines, I think it is implied that cabinet ministers, when they are making decisions under the law, should not make patronage decisions, but the rules do not come out and say that. In the guidelines themselves it would very much help if the Premier said, "Look, the rules are here to promote greater impartiality, greater equality and to discourage patronage." If that was right there in the rules, I think it would be perfectly obvious to everyone.

**Mr Morrow:** I would like to thank you for taking the time to come down and talk to us.

**The Acting Chair:** Any more questions?

**Mr Mills:** I would like to make a comment, Mr Chair.

We talk about the perception of the public about honesty. I think that the press, too, has a role to play in pointing out the considerable sacrifice that people make to serve the public. I think it was a little off-colour when a major article appeared in one of the Toronto newspapers where politicians were flying out of this building depicted as fat pigs with bags of money tucked under their arms. This sort of thing does a great disservice to the political system because I know that a number of people who I represent cut out the article and sent it to me and said, "Okay, let's have an explanation of this now." I went to great lengths and subsequently wrote an article pinpointing all of the inaccuracies that were there. I think that sort of thing does a disservice to the political scene in Ontario and I would like to see, for the record, that the press gets positive and does point out that there is another side of the coin, that a lot of people in government from all political parties sacrifice to serve the public; and I think that you have made that point.

**Mr Greene:** Yes, I could not agree with you more and I think we not only have to look at political ethics but also the ethics of the media. They have very strict codes of ethics, but they do not cover these kinds of situations. A number of years ago I used to work for Alberta social services and we had the same type of problem with regard to our media image. They would criticize us for all the scandals, everything that went wrong, and in a department of that size there are lots of things that go wrong; but the

good things that we did were never publicized. So what we started doing was simply preparing press releases with regard to the good things that were happening in the department, and what we discovered is that very often newspapers need more stories to print and they could publish most of the things that we prepared. That is something you could do as well, prepare stories that indicate the kinds of sacrifices that MPPs make. I think they will be picked up by the papers.

**Mr Mills:** Thank you for coming.

**Mr Poirier:** I just wanted to echo what Gord Mills has said. You can produce a lot of the stuff, and I am happy to hear that in Alberta the media did pick up the positive. There are a heck of a lot more positive things happening around here than negative things, but ever since Christmas, for some strange reason, I have seen some horrible sorts of stories about the so-called perks at Queen's Park. My God, when you put in about 100, 110 hours a week, you earn on the average about eight bucks an hour and you read about the perks, you say, "What bloody perks?" And yet you can emit, you can produce, you can send, you can give to the media a lot of the good aspects and the sacrifices that members make, from all three parties, to work here. And a lot of them—most of them—in the time that they spend here as a member lose a lot of money as opposed to make a lot of money, as opposed to what they write. And you, the new members, will definitely, if you have not already seen that or understood that, with time will really understand that.

I want to put on record and blame the media, because some of the horrible things that I have read, the untruths of some of the claims that they have made in some of these articles since Christmas, it is just appalling. And it is not the first time it is happening and it is definitely not the last time that it is going to happen.

The way Gordon described what he has been living through, people are going to question you if you get a new car, even if it is the smallest, cheapest model. And they will question if you go on a parliamentary trip, as if you won a first-prize trip to Club Med somewhere. I think the media have a lot of blame to take for the very negative image of parliamentary people. With that kind of image, a lot of people will refuse to get into politics, because it creates a frenzy. It is like kicking a hornet's nest with the constituents, with the taxpayers, who perceive that we are really living off the hog here, and that is completely untrue. I wanted to put that on the record and I am glad that Gord brought it up.

**Mr Greene:** I think one thing that is difficult for MPPs to do is to make a speech to their constituents saying: "Before I became an MPP, I was earning such and such an amount of money. Now I am just earning this and it is a tremendous sacrifice." It is embarrassing to make those kinds of statements. But one thing that you can do is to do a survey of the salaries of members of the provincial Parliament, and you could publicly release a document that says, "Before they were elected, they were making this much, and now it has dropped to this, and the reason they



are doing this is because they are committed to public service."

Another function of political parties, all the parties, should be to recruit good people to get involved in politics by explaining the public service ethic: "We want to recruit people that are there to serve the public, not to enrich themselves; and this is how much your income is going to drop when you become involved in the public service." I believe there are a good many people out there that want to serve the public and are willing to undertake these hardships to serve the public.

**Mr Poirier:** Very much so. Thank you.

**The Acting Chair:** Professor Greene, thank you for your presentation. We certainly did learn something from it.

**Mr Greene:** Thanks for inviting me.

**The Acting Chair:** Is there anything else to come before the Chair?

This committee stands adjourned until 10 o'clock tomorrow morning. Have a good lunch.

The committee adjourned at 1239.

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Thursday 21 February 1991

# Journal des débats (Hansard)

Le jeudi 21 février 1991

## Standing committee on administration of justice

Conflict-of-interest guidelines

## Comité permanent de l'administration de la justice

Lignes directrices en ce qui  
concerne les conflits d'intérêts

Chair: Drummond White  
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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Thursday 21 February 1991

The committee met at 1008 in committee room 2.

### CONFLICT-OF-INTEREST GUIDELINES

**The Chair:** I would like to call our hearings this morning to order. I would like to welcome all members to the resumption of our discussion in regard to conflict of interest and production of a report upon the request of the Premier and the House leaders.

### MONTE KWINTER

**The Chair:** First this morning, Monte Kwinter, whom we have heard from before in this committee. Mr Kwinter.

**Mr Kwinter:** Before I start, I would like to preface my remarks, that what I am going to say is generally applicable and not specifically applicable and that every time you talk about the subject, you can always bring out a specific incident that may contradict it. But I would like to talk about it in general terms, and the basic premise is—first of all we are dealing with members of the executive council, with parliamentary assistants, and I think we have to take a look, very quickly, at how the system works.

There is a difference between the parliamentary system and the US system. In the US system, for example, the President decides if he needs absolutely the best person that he can get for a specific job, and he goes out and tries to recruit that person. I will give you an example, George Shultz, a very able person in his own professional field, a world leader in the business community, was recruited and was told that he would come into the government of the United States under various conditions, and he had to make that decision. He had to decide: "Yes I will do it, I will put my affairs in order so that when I go to the Senate hearings, I will pass their scrutiny, and I will, in fact, with the advice and consent of the Senate, become a member of the cabinet." So there is that decision where he can say yes, he can say no, he can make a determination whether or not he is prepared to do whatever is required of him.

Then we have had situations where a President of the United States has gone out and recruited the president of the Ford Motor Company, for again the same reason, because this person had particular skills, particular attributes that served the country well.

We have a situation in the parliamentary system that is totally contrary to that. We have a situation where in many cases the Premier—the expression is, "He's got to play with the cards he's dealt." He goes into an election. He comes out with people, many of whom are total strangers to him. He may have only met them at some all-candidates meeting where he went there and supported them or whatever it is, but really does not know who they are, and then finds that he must structure a cabinet. That cabinet is structured not necessarily on merit but on gender, geographic location, political consideration, whatever it is, and suddenly

you have people who are invited to become cabinet members. There is nothing that says that just because they won an election, they have any ability to serve in that position, that they are going to do a good job or a bad job, it is just the luck of how it works. The Premier has the ability to appoint and to disappoint and there again, if you want to be very crass about it, it is not necessarily a matter of merit, it is a matter of all sorts of political considerations. The importance of understanding that is that it affects who is going to run for office.

In my case—and I have to put it in a personal context—I was recruited. I had no interest in running for public office, it was something that I would never ever have considered doing. The Premier—who was to become the Premier—said he would like me to run and I ran on the basis that in my opinion we would not form the government. I often said that if I knew we were going—

**Mr Scott:** That happened to be true.

**Mr Kwinter:** —if I knew that we were going to form the government, I would not have run because there was no reason for me to run. I was at a stage in my life where I had all of the creature comforts that I wanted. My children were grown up, I was looking to enjoy my life, to do the things that I wanted to do. I was assured that if I ran there would be no diminution of my ability to do that. I would be a member of the opposition; I may be able to make a contribution and that would be it. And then, lo and behold, things happened. The then Premier, who at the time that I got nominated was at 55% in the polls and it was felt that there was no way that he was going to lose, resigned. A new leader came in, there was a minority government, we formed the government and, as they say, the rest is history.

But what it means is that by the system where you require divestiture, you are really encouraging people to run who have nothing to lose and everything to gain, as opposed to getting someone who has everything to lose and nothing to gain. What you are really doing is setting up a formula for mediocrity. As Gregory Evans said, the only candidates you are going to get are those who are in Midland or Penetang or somewhere like that, because you have a problem.

Now, generally speaking, public service is supposedly the highest of callings. Usually, people who do it—and that is why I wanted to make sure that you understood I was not talking specifically—are people who are prepared to make that sacrifice, who are prepared to say, "Yes, I will do it and I will live by these things." But what you are really doing is restricting the calibre of people who would consider coming into government.

To my mind, the thrust should be on disclosure as opposed to divestiture, because when you get into the divestiture, it creates so many problems and so many ways of getting around it that it is really meaningless. The key



thing, to my mind, is that there has to be a provision whereby you disclose everything, so that if something comes up where you are found to be in a breach or potential breach, it is there. It is there for someone to see.

Now, can we just talk about the whole issue of the proposed conflict-of-interest guidelines set out by the Premier? The basic premise, to me, is a sham. The reason I say that—and I am not trying to in any way impute any kind of motive to it—under our system, the Premier has the sole prerogative to decide who is in the cabinet and who is not in the cabinet. There is no recourse; there is no tribunal; you cannot suddenly say, “I have been unfairly dealt with, I have been removed from cabinet and I want my day in court.” That is what gives the Premier his clout.

You people have not been around long enough, most or hardly any of you other than our guys, to know that in caucuses and in cabinet there can be some very, very sharp divisions and the Premier is really the 51% shareholder. It does not really matter if everybody is allied against him. If he says, “This is what’s going to happen”, that happens. It is as simple as that.

Most premiers, being leaders, try to make sure that they are not too far ahead of their troops and that they have got everybody on side, but if it comes to the crunch, the Premier has the ability to say, “This is what we are going to do and that’s it.” There is no one who is going to challenge him if they want to stay in the cabinet, because he has that sole discretion. So what happens is that when you have the Premier in that position, to have this, what I consider to be window dressing, of putting forward a bill that is supposed to outline what the conflict-of-interest guidelines are, is meaningless.

Let me give you an example; I have to use specific cases and, as I say, I do not want to make this political. Just before the House adjourned we had this situation in Hamilton. Now the Premier makes a decision, it is his to make, and he says, “In my opinion, that is not serious enough to warrant expulsion from the cabinet of those two members.” Another premier could have thought it was. Let me give you an example of what happened to us. I have to apologize because I have not been monitoring what has been going on here.

We had a situation with Ken Keyes. Ken Keyes is the Solicitor General. He is out on an OPP boat. He has got the head of Scotland Yard with him and they are offered drinks on the boat by the police officers. They are enjoying a pleasant afternoon cruising the St Lawrence River and that is it. It happens every single day. I used to be the chairman of the harbour commission and I can tell you it is honoured more in the breach than in the execution that every boater on Lake Ontario that has any kind of a boat serves his guests something to drink. It is illegal, but he thinks nothing of it.

Now, in Ken Keyes’s position, he is the Solicitor General. Someone brings it to the attention of the—I do not know, I cannot remember if it was the media or whatever it was, but it became public knowledge. The Premier decided the Solicitor General had to resign because of that particular situation. Now, another Premier could have said: “Well, I don’t think that that’s really—I mean it’s, yes, sure it was a

breach. I don’t think it was that serious and I don’t think he should resign.” So you then have it being very subjective and it is subjective at any time anyway, because the Premier has the right to name his cabinet.

So when you put these particular constraints in, what you are really doing is setting up some sort of a smokescreen to say: “Look at how righteous we are. Look at how we’ve got all of these controls.” But in effect there are lots of ways of getting around it and if you take a look at some of the provisions—section 15 is so open that it is meaningless. It says you should not do this or that, unless you satisfy the Premier that this is this and you go through the whole line of things so that in effect it really devolves to the Premier anyway. He is the final arbiter, he is the one that decides anyway.

So to my mind, it really sets up an expectation that somehow or other there are conflict-of-interest guidelines that are meaningful when, in fact, all they are are exactly that, they are really guidelines. And those guidelines are there for the Premier to enforce anyway, because if someone—and sometimes you may not even know about it—if someone does something that is potentially an embarrassment to the government, and the Premier decides he does not want this to come out, he does not want to have to deal with it and he comes up with some reason why that person is removed, whether it is ill health, whether it is—whatever reason, that person is gone.

So to go through this whole system, to my mind, as I say, is window dressing.

#### 1020

Now, let me just talk very briefly about some very specific things. You get someone who, again, almost by accident—there are lots of people who run in elections hoping they will not win; that happens. They run because the party needs a candidate. They put their name forward. Suddenly they find not only do they win but they are in the cabinet. And that really compounds their life, because what happens is that certain things may be forced upon them.

I will give you an example of someone who is, let’s say, a real estate broker. To become a real estate broker now—and the qualifications are becoming more and more stringent every day—you have to take all sorts of university courses, you have to serve as a salesman for a couple of years, you have to go through this whole thing, and then you become a broker. Under the conflict-of-interest guidelines, you would have to divest yourself of that licence.

You could be a minister for one day or five years. Again, you are at the whim of politics, and politics is a blood sport. Every time you are there, there is someone there trying to find a way to get rid of you. If they make enough noise, and if they get enough public support they will get rid of you if there is cause; or even if there is not cause, if there is perceived cause. If they can make the case, you are gone.

So what happens is that you may have surrendered that licence and if you have been around—I mean if you surrender it, you can always get it back if it is a matter of two years, but if you are in cabinet for longer than two years, when you leave cabinet you then are considered as if you

had never had that licence at all. You have to start all over again, which to my mind makes no sense, because the mere fact that you were licensed by a crown agency should not be a conflict as long as you are not in conflict.

That is the major problem. There are lots of things that you find yourself offside on, just by the fact that you have become a member of cabinet. That, to my mind, does not mean you should have to totally restructure your life. What you have to do is you have to put your affairs in such a condition that you will not be in conflict. Not that you will have the potential of being in conflict, because you have the potential of being in conflict at any time, whether you are licensed by some group—and of course, as I say, there are situations that are obvious; you cannot have your mother working for you; you cannot be giving contracts to your relatives. I mean, those are obvious conflicts.

But in other areas where there are perceived potential conflicts, I think that you have a problem in that you are going to restrict the calibre of people who will run for public office. You are going to create problems where people are—and being a member of the executive council is by its very nature a very short-term job. I do not know what the figures are, but I would imagine they are very, very short. For someone to have to totally restructure their economic affairs and their lives to conform to that is going to mean that you are not going to get the calibre of people that you need. On that point, I would like to answer some questions.

**The Chair:** I would like to welcome Mr Sweeney who has joined us, and to mention that we will be about 10 minutes late, so if you wish to resume old friendships and reappear later, feel free to. I also would like to welcome to the committee Mr Huget and Mr Johnson.

**Mr Sorbara:** I just have two questions, Mr Chairman. The first is this. Monte, you have obviously read and, I guess, re-read section 15 a number of times in preparation for your testimony. Having read those sections, can you tell the committee who stands in judgement of the Premier in respect of what assets the Premier has to divest himself of or not divest himself of? Who makes the decision as to whether it would be undue hardship for the Premier to sell a particular asset or a particular business interest?

**Mr Kwinter:** From my reading of it, it is the Premier. He decides. There is no provision for anyone to do that. And that, of course, also provides this whole problem with the subjectivity of it. If someone who has got very, very large assets is asked to divest even part of it, it might be a greater hardship than someone who is asked to give up something else. So it is very subjective, and the minute that it becomes subjective, that goes back to the point that I was making earlier. It really becomes the Premier who makes the decision, and the minute he is given that leeway, which he has anyway, it is meaningless.

That is why, to my mind, section 15 really does not do anything. It sets out some things but then it immediately gives all of the various conditions whereby they can be waived, and they can be waived at the discretion of the Premier.

**Mr Scott:** Supposing Bob Rae owns the assets?

**Mr Sorbara:** Well, that is it. Just one other question. My colleague Mr Scott says, "Supposing Bob Rae owes the assets?" The problems with these guidelines is that the Premier stands in judgement of everyone else but there is no one who stands in judgement of him. And look what is going on in British Columbia right now with Premier Vander Zalm.

**Mr Kwinter:** Indeed.

**Mr Sorbara:** Now, my other question, before we get to Mr Scott, is this: I am given to understand that you had some extensive experience in the business world prior to your coming to Parliament. The Premier, when he announced these guidelines, said that his standard would be the sale of assets or business interests or private interests within 60 days. Can you compare that with your own experience of how long it might take to sell a business interest in the real marketplace of the Ontario economy? In other words, is it your experience that, having been told that you have to sell your business interests, you are likely to be able to find a purchaser and be able to dispose completely of that interest with no residual interest in the asset within 60 days or 90 days?

**Mr Kwinter:** The chances are very slim, but not only that, there is a whole other range, and again I have to talk from personal experience. My family have a property that, long before I got into government, I arranged my estate so that I am not involved, but there is a no-sell provision in their agreement. This property is owned by members of the family and they do not want any strangers in there. They do not want any of the partners selling to someone else. This is something that was left to them with a very specific intent and the feeling was that it should not be diluted. It should not be sold off where suddenly there are people in there other than the family who may influence what happens. How does someone deal with that?

Another provision, 25, says that you should not acquire property. It does not say anything about whether you already own the property. That is a whole other issue. Does that mean you have two classes of citizens? The guy who has the property before he comes into the cabinet is fine, but the member of the cabinet or a parliamentary assistant cannot acquire property other than recreational property or a principal residence.

The other whole aspect, the point that Mr Sorbara is making, is that you have to be under a distress sale. If someone knows that you have 60 days to get rid of something, you are not going to get the same kind of price. You have got to make it for cash, because if you have a residual interest in a mortgage or whatever, you have not really disposed of it. You still have a residual interest in that asset.

So that is a very serious problem. It is bad enough for the guy who has to do it, but every time this happens, it is one more reason why someone who could bring something of value to politics says, "Why would I ever, ever get involved in that kind of a situation where I have to subject myself to that kind of arbitrary action?"



**Mr Scott:** May I just ask you to comment on two matters? One is sort of personal to you and one is personal to me.

Your wife is a public school teacher and has been, I gather, for most of her career when she was not raising children.

**Mr Kwinter:** She is a high school teacher.

**Mr Scott:** High school teacher and a teacher of considerable distinction. She has, as I happen to know, for many, many years been correcting examination papers or some such, under an appointment that is made, I gather, on an annual basis, without competition, by the Ministry of Education. Hundreds and hundreds of teachers do that in Ontario. The Ministry of Education wants to get the best people to do it and it goes out and finds them, but it is not a competition. Under these guidelines Wilma would not be allowed to do that, as I understand them, because it is not a competition appointment.

1030

I would like you to comment on that, because one of the things that, it seems to me, is very unfair about the guidelines is the inequity it does to spouses. I can understand the case imposing obligations on members and imposing disclosure on spouses, but it seems to me when you basically say, as these guidelines do, to Mrs Kwinter: "You can't do this work any more because your husband has been appointed to the cabinet," you are imposing a very heavy burden on a stranger who, and I happen to know her, might not have wanted you to come in here in the first place but was overridden by your own independence. That is point 1.

Point 2: To deal with divestment, I am just a little shattered to hear that you were solicited to run by the former Premier. I was not, by the way, and indeed over five years he had grave doubts about whether I should have. You and I, I think, had one characteristic which distinguished us from most of the new class of 1985 and that is, we were older. You were a lot older than me, but we were both older. You have given the reasons why you entered politics; I entered politics because I thought the time had come when I could make a useful contribution. I expected, like you, that it would be in opposition.

An older person, particularly a person who runs a business—I was in a small law firm that has no pension plan—is obliged to accumulate assets or when he becomes 60 he is going to starve. That is the reality. Every prudent person puts away assets. They may be in RRSPs but they may not; RRSPs are not always an economic way of maintaining your assets. What concerns me about these guidelines is, because you cannot predict how the Premier is going to react, after you are elected, to your being appointed and divestment, it seems to me one of the problems is that a person like that is going to say: "Look, I'm not going to run because if I run I can't predict whether the Premier will require me to divest or not. If he requires me to divest I won't be able to without running the risk that when I am 65 my assets turned into cash simply aren't going to produce sufficient income to keep me and my family until I'm 85."

I would like you to comment on those two things, because I think they represent real difficulties—and it is not political—about what is here proposed.

**The Chair:** I am sure that your response will be equally as brief as the question.

**Mr Scott:** That was three minutes.

**Mr Kwinter:** Yes, okay. Let's talk about the first one. What had happened was quite interesting. My wife is a high school teacher. She is the assistant head of English at a school in Scarborough, has been teaching for many years, and is also a correspondence sort of teacher and marks papers. Again, I have to say with some pride that she was singled out with about three others being one of the top teachers of this particular program in Ontario and was given an award at the time. She has been doing this for 15 years without any problem. When I became a minister I had to disclose all of the things that I did and I put this in, not even thinking that it was a problem. The next thing I knew I had a visit from one of the lawyers retained by the Premier's office, saying, "We think you're in conflict," and I said, "What is this conflict that I have?" "When your wife works for the school board that is not a problem; she is working for the school board. But the marking of these papers actually puts her in a situation where she is working for the Ministry of Education, and as a result she may have to give that up."

I can tell you, it never got to that because after some to-ing and fro-ing the decision was made that, "I guess maybe not," because the key, which was quite interesting, is that there is not a contract. There is no obligation on the Ministry of Education to send her papers and there is no obligation on her part to mark them. If they send them to her and if she marks them, that is fine. If she does not mark them they will not send her any more papers, but there is no obligation on her part. So the decision was that, because there really was not a contract and because it was kind of this loose arrangement, she was not in conflict. But I will tell you that if it had been determined that she was, I probably would have had to say, "I'm sorry, I cannot serve on the executive council," because I may have been in the executive council here but I would not have been in the executive council at my house. I would have had a very, very serious problem. It would have been that serious, that something that I was doing was impinging on her ability to do the things that she was doing and had been doing for many, many years.

That is the kind of thing. If you want to take that extension, anything you do—if you get a driver's licence, if you really want to say, "Listen, you've got a driver's licence," as a minister they are going to give it to you, whereas they might not give it to you if you are not. So you cannot have a driver's licence or anything else where there is some kind of linkage to some provincial agency.

To get back to the second part, I agree that there are benefits and there are negatives to entering politics late in life. Again, you have to make a determination about what happens to you afterwards. You do have to be able to provide for yourself, because it can happen to you that if you do not serve the required five years—and it happens

from time to time—there are no pension benefits for you and you may be giving up the best earning years of your life. That is a determination that you make. I am not trying to say that that should not happen; all I am saying is that the end result is, what is the purpose of this thing? The purpose is to try to encourage the best people possible to run for public office and to protect the public interest on someone using his position to his own gain. I think it is important that those two things really be kept in tandem, because one may defeat the other. I think we have to come up with a compromise.

If I could just say one last thing before I get to another question: One of the other problems that we have is that when you are sitting in cabinet, somebody who has the best information and the greatest experience in a particular subject usually has to exclude himself when that subject comes up. If you are a farmer and a discussion is taking place on something that is going to impact on farmers, you have a potential conflict of interest, even though you may not have a specific conflict of interest. It is a general description dealing with all farmers, so you have to leave.

We had a situation in our case. We had a minister who was an owner of a sawmill, knew the lumber business, knew the mining industry. He was a very, very substantial player in that field in northern Ontario, yet any time anything came up dealing with that area, where his expertise, his experience, would have been invaluable, he immediately had to leave, because we were talking in general terms about something where he could indirectly or directly derive a benefit. So that is another problem.

**The Chair:** We have a light agenda this morning, and with the indulgence of the committee and our next witness I would like to continue, perhaps with more time for the other caucuses as well as the official opposition.

**Mr Harnick:** Your party elected, I gather, in 1987, 95 members. And I gather, of that 95 members there was a broad representation of many, many different groups, many different interests. If divestiture rules had applied to your cabinet, could it have represented all of those various interests? Could you have had a cabinet, realistically appointed from a party as diverse as your party, that would represent all of those interests? Would it have been possible to do that?

**Mr Kwinter:** The cabinet would not have particularly represented all of the interests. There is no problem in structuring a cabinet. You have X number of bodies. You have to pick 27, 30 depending on how many the Premier decides he wants, and you pick the ones that you pick. Some people are immediately excluded because of situations that are either in their control or beyond their control. But there is no problem in structuring a cabinet. The problem is, is that the best cabinet that you could have gotten? That is the big problem. There is no trouble in getting a cabinet.

1040

**Mr Harnick:** You can always find bodies.

**Mr Kwinter:** You can always find bodies.

**Mr Harnick:** I am talking about, could you find the best people out of those 95, who could have represented the broad spectrum of Ontario, with these kind of divestiture

rules, if you have a party that in fact represents a broad base? You may have a party that only represents one particular interest. They get elected and that is easy.

**Mr Kwinter:** But the problem that you have, Charles—and that is the point I was making—is that you have got to step back one step. With these kind of rules, you would not attract the kind of people as candidates. That is the problem. One of the most common comments I got after I decided to run was: “Why would you do it? Why would you possibly subject yourself to that kind of situation?” And I said, “Well, you know, it’s something I want to do.” But for every Monte Kwinter who is prepared to do it, there is probably 50 people who are saying: “There is no way. Why would I possibly subject myself to that?” That is why I am saying that what you get is a pool of candidates who have nothing to lose and everything to gain as opposed to someone who has got everything to lose and nothing to gain. I think the whole system suffers because of that.

**Mrs Mathysen:** Mr Kwinter, you have indicated a preference for disclosure without divestment. Now, without this divestment, one thing that concerns me is that you still have the perception of conflict. Up to this point, a great deal of what has happened in terms of the resignations of ministers and people in cabinet has been the result of public pressure because of media scandals. Do you not think it would be better to have a set of concrete rules for the Premier to measure whether or not a resignation is appropriate rather than to leave it to this arena where it becomes a matter of resignation because of the perception of conflict?

**Mr Kwinter:** Again, let me relate it to a personal sense. My family are in the meat-packing business. Every time a budget comes in that imposes a tax, they are impacted by it. But other than things that happen to everybody and all businesses, there is nothing special in a general sense as to what happens to them.

If I have to divest a business because it is perceived that I could in some way or other gain a benefit as a minister when that business is not doing anything other than any other business is doing, to me that makes no sense. Now, if I have a business that is doing business with the government, then absolutely. That is where the disclosure comes in. You cannot, as the rules of the game, do business with the government where you have the ability to influence who gets that business.

But what possible benefit there is for some guy who is running a general store up in Kapuskasing to get rid of his business because he is going into the cabinet makes no sense to me. What benefit is he going to get other than what is going to happen to anybody who is in business? If suddenly it is decided that this little store is going to be the chief supplier to every reform institution in Ontario because this particular minister wants it, that is a conflict, without question. By having the disclosure and by reporting on a regular basis, you deal with that. To my mind, what you need is guidelines.

Another thing that I would suggest is that you need penalties that are far more stringent than there are now.



Under the present penalties either you will be reprimanded or you could lose your seat. It would seem to me that it is just like insider trading. If you put some punitive financial penalties, where if someone trades on information that he has then he pays the consequences; but to require that everybody must divest or put it in a blind trust when there is no reason for it other than the fact that it is a commercial enterprise, to me makes no sense.

**Mrs Mathysen:** How would you develop this punitive financial price to pay? Would it be a formula? Because obviously if my net worth is \$5,000—and I regret to say it probably is—and someone else's net worth is \$100 million, obviously a fine of \$1,000 is going to hurt me and not hurt that person with the larger income. Would you have a formula or—

**Mr Kwinter:** No, I do not think it has anything to do with the value. I think it has to do with the offence. I think that if somebody uses his special position to further his own economic interests, there should be some penalties. To give you an example, someone may decide that—and I am just fantasizing—because of his ability to direct a contract he could make \$40 million because of whatever it is, and so what? He will lose his seat. That is just great. He will lose his seat and go on his way and live happily ever after. What I am saying is that you set up a system whereby if you contravene—when I say reasonable, I do not mean reasonable in the sense of moderate—guidelines or conflict-of-interest legislation that provides penalties for people using their special position to their own economic gain, there will be some severe penalties. That would be the deterrent. But to put it in the way that it is now, where the Premier is the arbiter, and if undue hardship—and that means maybe undue hardship for one and not for another—or if you tell me and if you convince me that it is okay, you have lots of problems. To me, it makes no sense.

**Mrs Mathysen:** So using your example, this person should lose his or her \$40 million windfall and perhaps have a fine? Lose the fruits of his or her illegal activity?

**Mr Kwinter:** I am sure that whoever would draft the legislation could make sure that it is done so that the penalty is not so nominal that it is meaningless. But I think that that is the way to deal with it.

**The Chair:** Mrs Mathysen, is that it?

**Mrs Mathysen:** I had other questions but I am willing to allow others on this side to have a chance.

**Mr Johnson:** I regret that I have not been here earlier this week and that I am a substitute, but nevertheless I have listened to what Mr Kwinter has had to say this morning. I am disturbed by some of the things that he said because, not being a wealthy person and not ever having any desire to be a wealthy person, of course it puts me in a position where I have a different perspective on things, most certainly. My philosophy, I guess, would be somewhat different than yours. You suggested that those of us who are less wealthy or are, we might even say, poor, would have everything to gain and nothing to lose. I would interpret that to mean that this was a monetary exercise, and I guess that is what we are dealing with here, by and large. But there are other reasons why people want to get

elected, and it is not for the reason of losing any kind of wealth or gaining any kind of wealth, I would think.

Certainly that is not the reason that I became involved in the Ontario political spectrum. My story is not unlike your own. I was kind of chosen by my peers to be the candidate and I had no expectation of being successful and so I merrily went along my way with no expectation of ever being successful, and here I find myself in a position that I had not expected. My wife, quite frankly, was very upset by this. She said, "Now look what you've done," and so far she is still with me. So here I find myself in Toronto at Queen's Park, and I made some sacrifices—some personal sacrifices, not monetary sacrifices—although I might add that at this point in time I am more in debt now than I was prior to taking this position. I do not understand. I guess I could deal with a little bit of money quite well, but I cannot deal with more. Maybe that is a weakness within myself; I am not sure.

1050

**The Chair:** These are great stories. Reminds me of Mr Scott. Is there something coming out of this?

**Mr Johnson:** You inferred that we are missing some of the best people with these new conflict-of-interest guidelines, but then we are missing some of the—

**Mr Sorbara:** I do not think he said that. I think he said, "Some people will not run."

**Mr Johnson:** Sure, and again I just bring up the idea that there are some sacrifices that are to be made by people who want to be involved in the political field, to want to be involved in the political government of Ontario. For example, in 1987 when I ran I was working for the Ministry of Community and Social Services and Mr Sweeney had to sign a document that allowed me to run in 1987, and I thank him for that, except that I lost my salary for that time. So I made that sacrifice and, not being a wealthy person, that was a considerable sacrifice for me to make at that time. On the economy of scale, I would suggest that for me that was probably as big a sacrifice as someone who has millions of dollars and has to divest of that, except that they would still have that and I did not have my salary.

**Mr Scott:** But why do we not encourage to run rather than asking them to make sacrifices?

**The Chair:** Do not let him detract from his detractor.

**Mr Johnson:** So, anyway, it is—

**Mr Sorbara:** The rules of the Ontario public service provide for a leave of absence.

**Mr Johnson:** Would you not agree, Mr Kwinter, that people do have to make sacrifices and some sacrifices—again, it is a perception—would be minimal and some would be more than minimal, but it is based on a perspective and it is based on maybe a philosophy and maybe your particular wealth?

**Mr Kwinter:** Can I respond? You have disagreed with what I have had to say and I have disagreed with what you have to say in that there seems to be a perception from some members that there is virtue in being poor and not having anything, and that is a great virtue. I am not saying it is not a virtue, but we are not dealing with someone

taking monastic vows of poverty saying, "The only way that I can really come to terms with the grand scale of dealing things is that I've got to surrender all my worldly wealth, I've got to take a vow of poverty and I've got to go into a monastery and do that. That is where the only virtue is, and anyone who does not subscribe to that is not virtuous and has no validity." I am not trying to say one is any better than the other.

What I am saying is that we are dealing with conflict-of-interest guidelines, and to my mind a person who has no wealth and a person who has a lot of wealth can both be in exactly the same problem of having a conflict of interest. The only difference is that under these guidelines the person who has the wealth has to divest of it. There is nothing to say that just because you have nothing you cannot—and again, I do not mean this personally—be the greatest scoundrel in the whole place and that you may have the greater motivation to try to feather your own nest. So I am not trying to put virtue in saying that rich people are virtuous and poor people are not, or vice versa.

All I am saying is that there are a lot of people who can make a valuable contribution to the political process, and all of the wisdom does not rest on one side. It does not rest just with the social democrats and it does not rest with the Conservatives and does not rest with the Liberals. One of the things that literally drives me up the wall is suddenly 6 September comes along and all of these people sitting in the New Democratic side think that something magical happened to them, and that suddenly all of the—

**Mr Johnson:** Something magical did happen.

**Mr Kwinter:** It happened in that way, but that all of the intelligence, all of these right answers have suddenly fallen on them and that "Now we have the answers." As we have seen, it is not quite that easy. Suddenly all of the answers that you thought you had have to be tempered with the real world.

All I am saying is that there are people out there who could be making a contribution that this province could benefit from. I am not saying that there is a virtue in being wealthy, there is a virtue in being poor, but you cannot make them exclusive. Without question, when you impose these kinds of restrictions and these kinds of guidelines you immediately discourage all of those people who have had the good fortune and the ability to accumulate assets and wealth from saying, "You know, I wouldn't mind providing some of my energies and some of my time to public service." That is a sacrifice.

I can tell you, you have had to sacrifice but everybody that comes into public life makes a sacrifice, and it does not matter what their financial status is. They are making a sacrifice; believe me. What is happening, though, is that you are really discouraging a significant sector—I am not talking in size but in the ability to bring something to the process—from doing it. I think that that is something that should be considered.

**The Chair:** I would like to recognize Mr Huget and Mr Morrow but, unfortunately, we do not have much time. It might be possible if you have very brief questions. I see that the longer the question the longer the response. We

could attempt to have brief questions or perhaps move on to Mr Sweeney. I would—

**Mr Mills:** Maybe Mr Sweeney has a timetable. We can ask him.

**The Chair:** We have indeed inquired and Mr Sweeney has, of course, come down from—

**Mr Sorbara:** He has retired. He is in heaven.

**The Chair:** He certainly does look reasonably content right now; however, Mr Sweeney has, in fact, come down from Waterloo.

I would like to thank Mr Kwinter for appearing and if we can move on to our next presentation from Mr Sweeney, please.

**Mr Huget:** Mr Chair, I have a very brief question. A specific part of the proposals—

**The Chair:** Very brief?

**Mr Huget:** Yes, they are.

**The Chair:** Mr Kwinter, would you mind very brief questions and, if possible, very brief responses?

**Mr Kwinter:** Sure, okay.

**Mr Huget:** Section 14 says, "Where a minister makes a declaration of conflict of interest at a cabinet meeting, the secretary of the cabinet shall, after that decision has been made," make that conflict of interest public. What are your feelings on that in terms of how you feel that would work? How could it work?

**Mr Kwinter:** To my mind it is an unnecessary provision. What happens is that when you are at cabinet, something comes up and sometimes it is known in advance, someone sees the agenda and says, "Well, in this particular instance I will not be there. I will not participate because there is a conflict," or in some case something will come up that no one expects and the member may say, "I'm not even sure whether I have a conflict, but there is a potential conflict and I'm going to exclude myself." That is it. It is a very simple thing. He just gets up and walks out of the cabinet room and then when the matter is finished, someone goes out and says, "Come on back in; we've finished that."

To get to the point where every time that happens—

**Mr Scott:** For example, if cabinet was discussing teachers' salaries, you would say, "I can't participate in this discussion; my wife is a teacher."

**Mr Kwinter:** Yes. To suddenly have a public announcement that Monty Kwinter did not participate in the discussion on that, I do not know what the purpose of it is. I would say if there was a serious breach of the conflict-of-interest guidelines, or if there was a potential one and it was a matter of public interest, then I would say that there should probably be an announcement of it because that is part of the disclosure. I think that is the key. I think the whole thing is based on disclosure, as long as everything is disclosed so that everybody knows where there are problems. But to have it happen every time something comes up, to my mind is just not feasible.

**Mr Huget:** Would you not agree that there would be any merit in terms of the public opinion of the political



process, that when we do that and exercise integrity that the public is aware of that?

**The Chair:** Mr Huget, you had asked for one brief question and I think we have tried the next witness's patience enough.

1100

JOHN SWEENEY

**Mr Sweeney:** It is interesting to be back and see that not many things have really changed, especially that last question that the questioner managed to get in even though he knew he should not. That was a tactic that a lot of people engaged in.

Let me make a couple of disclaimers right at the very beginning. I was asked to come here. I did not initially offer myself because, being out of the system, quite frankly I was not sure I had anything to offer. The second point that I would make is that anything that I say would have had no impact on me personally at all. The only assets that my wife and I have is our family home, period. I just want that to be clear, that I do not see there would have been any benefit for myself.

I do have some concerns, however, and those concerns are based upon having sat in the Legislature for 15 years: 10 years in opposition, five years in government, having been a cabinet minister for five years, having worked with six parliamentary assistants over those five years, and I think having an opportunity both to observe and to participate in discussions and in decisions that gave me some insights as to what was going on.

I want to say right at the very beginning that during those 15 years I have no personal knowledge of any members of the Legislature from any political party acting in a way deliberately that would have benefited them personally. So please understand, that is where I am coming from. That just was not within my range of personal knowledge. But that is not to suggest that some things were not happening that I did not know about. I am not pretending that I knew everything that was going on.

So therefore I start from the assumption, based upon those 15 years of experience, that people come here not to benefit themselves personally but rather to provide a service, to do a job, to make a contribution, whatever way they want to put it. That has been my experience. And I have to draw from that experience in the kinds of comments that I make. Because of that, I think we need to be somewhat careful in impinging upon, involving ourselves too deeply in the personal lives of the members of this Legislature. I think somewhere along the line there has got to be a limit where you simply say that the members of this Legislature have a right to their personal lives. Because they are publicly elected does not mean that everything about them then becomes public. I simply cannot accept that premise. I realize I may not be in the majority when I say that, but that is a point that I clearly want to make.

Second, I think we need to be careful of structuring our responses to some incidents—and a number of them I gather have been discussed, and I am not going to go into them personally—on the basis of, "Because they happened

or because they could happen we're going to set up a structure in such a way that we affect everybody." I am stretching my language, but the way that it appears to me is, we are going to assume that people are going to do these improper things, and therefore we are going to set up a structure that is going to make it more difficult for them to do it. I do not believe that. I do not believe that people are going to do these things. I believe that it is possible for people to do it. I think I know, given my life experience, as much about human nature as most people around this committee room do. I know that there are people who cut corners. I am not saying it cannot happen. But I start from the assumption that it is not likely to, and the evidence and the experience is that it does not very often.

Even if you go back and look at some of the incidents of the Legislature during the 15 years in which I was a member, affecting all three political parties, even when there was "an incident," more often than not it was a mistake, it was foolishness, however you want to describe it. It was not, in my experience, malicious intent. I think we should have as our starting principle that underlying sense, not that we want to presume that people are going to do improper things and they have to be prevented from doing it, but rather that it could happen and how do we deal with it if it does happen.

I want to say, from my experience of having worked with six parliamentary assistants, that I think it is a mistake to include them in the way in which they are under these guidelines. It has not been my experience that parliamentary assistants have access to the same kinds of information, the same kinds of decisions that ministers have. They just do not. And that is not whistling in the dark, that is having worked with these people. I know what they were exposed to; I know what they were told; I know when information was available to them; I know what meetings they went to. They are not the same. They are not the same as a minister. You might want to put some variations in but I think it is a mistake, particularly in the way in which the former government allocated parliamentary assistants when they are only in there for a year at a time. If the present government has a different process or a different structure in place, they may want to handle the thing differently.

But I think it is a mistake to simply say parliamentary assistants are the same as ministers with respect to conflict of interest. It is just not so.

Third, I want to say I have really serious reservations, and I always have, about the impact of the guidelines or the potential impact of the guidelines on members, on the family members of the member, whether it is his or her children or his or her spouse. Again, it never affected me personally, but I always had the sense that somehow or another we were saying that your spouse or your children were subservient to you, that their lives depended upon yours. Well, heavens, if there is anything we have tried to do in the last decade or so it is to make exactly the opposite case—that spouses, be they men or women, have the right to their own independent lives, and your children have the right to an essence of their own independent lives and should not be dependent upon who you are and what you do.

Again, I recognize the reality that that can never be a black-and-white situation. Your spouse is affected by who you are and what you do. But for God's sake let's not write legislation or guidelines which are going to impose even more onerous burdens on them. I am not suggesting that there may not be some connections there, but I am saying please be careful how you do it. I just do not think it is fair to put them in that particular situation.

I am opposed to the divestment procedure as contained in the guidelines. I think it is wrong; I think it is unnecessary. Again, let me play the broken record: it would not have affected me personally. But I know a lot of my colleagues from all political parties whom it would have affected, and probably will now. Let me make the observation that there are many people who come into this Legislature at a time in their lives where they have spent the majority of their adult life building up a business, let's say. They have put their heart and their soul into it. They have put their time and their energy into it. And they come in here and they are told: "If you want to be a parliamentary assistant or if you want to be"—now, I may be wrong there, but—"if you want to be a minister, you have got to get rid of it." I think it is wrong, especially since I have a strong sense that members are not going to be here for the long periods of time that they used to be.

I would be very surprised, quite frankly, if in the coming decades you see people running for more than two terms, not whether they were elected or not, but actually running. I think that is going to be the procedure of choice. It is a tough job. You are on the firing line all the time. Your phone is available 24 hours a day, seven days a week. Even when you are trying to do the best thing you can, you are still criticized. I mean, there is only so long that most human beings can take that. To say to a person that has spent the bulk of their life building up a business and they may be in here for one or two terms—as my previous colleague said, they may be in the cabinet from anywhere from a day to two or three years—that you have got to divest that business, I really think that is wrong.

1110

Disclosure, yes. I have no problem with disclosure. If anything, the disclosure principles could be strengthened but divestment, I think, is fundamentally wrong.

I stand to be corrected, Mr Chair, but I do not know of another jurisdiction that does this. There may be some, but I do not know of any. That does not necessarily mean because this jurisdiction is considering it that it is automatically wrong. I am not suggesting that. But it certainly does suggest you take a good, long, hard look at it.

Just on a minor issue, I noticed that the guidelines suggest that gifts to ministers be limited to \$100 instead of \$200. I think that is foolish. I really do. I know that as a minister, when people would call up my staff and ask me to participate in something, they would say, you know, "Does the minister expect to be paid?" and the answer was automatically "no." To the best of my knowledge, no minister gets paid for doing those kinds of things. They said, "Well, we would like to give him something," and they were simply told that there is a limitation of \$200. I cannot think of anything I ever got that was anywhere close to

that. Having been the Minister of Community and Social Services for four years, and given the fact that most of the people, as Paul would well know, most of the agencies I spoke to did not have much money anyway—and as Minister of Housing it was the same situation. The Ministry of Municipal Affairs, they never said they had anything, anyway. So I think that is petty. I really do. I think it is totally unnecessary, I think it is petty, do with it as you will.

I do not see this clearly identified in the guidelines, but can I take the opportunity to put a caution on the table? Because I felt this myself as a minister. Please do not put ministers and parliamentary assistants in a position, with respect to their constituents, that is less than any other member. And there are times when I clearly got the indication that prior to my joining the cabinet, there were things I could do for my constituents that I was not able to do afterwards. I could appear before certain boards, for example. I, on a regular basis, appeared before the Workers' Compensation Appeals Tribunal, personally, on behalf of my constituents. It was sort of suggested to me that afterwards I should not do that. That is just one example.

I do not want to go into a lot of details. All I am saying is, for heaven's sakes do not put a minister in a situation where his or her constituents receive less service than constituents in any other constituency. I do not think that is fair. And I realize the delicate balance. I appreciate that. But I think it is fundamentally unfair to put him or her in that position; more so, to put his or her constituents in that particular position.

I think, Mr Chair, I will just leave my comments there. I have a few other things I want to say but I suspect there may be some questions dealing with it.

**Mr Poirier:** It is nice to see you again, John. Listen, the guidelines state that if the Premier can decide for a particular reason or reasons that he may or may not have, that because a certain divestment would be a question of hardship and therefore to make an exception to that, I would assume that he has the power to allow a member, minister or parliamentary assistant to keep his or her belongings or wealth or whatever. Would you believe that that would resolve the image, that so-called fear of perception, that the Premier has pertaining to ownership of a potential minister or parliamentary assistant?

**Mr Sweeney:** Let me make two observations. The first one is, the intent of the previous conflict legislation was to have an independent third party, independent of the members of the House, of the political process, of all of those kinds of elements, make those kinds of decisions. I always felt uneasy that the Premier was put in the position of having to make those decisions, personally. I think it should be of a more general application than that.

Second, I think I have made it fairly clear that I just do not agree with the divestment process at all. So I do not think it should be left to the Premier to do it.

Let's face it, any Premier is a man or a woman like you and I. They have prejudices, they have biases, they have whatever you want to call it. On what basis are they going to make that decision? I do not know. I really do not, and I do not think it is proper for them to be put in that position.



I appreciate the fact that the Premier is the chairman of the council and therefore has the automatic right to make certain kinds of decisions. If someone has got to do it other than an independent third party like Judge Evans, then I guess it has got to be the Premier. I do not think you should put him in that position. I cannot imagine why he would want to be put in that position, personally.

**Mr Poirier:** So it would not appear that it would resolve the problem of perception on the outside.

**Mr Sweeney:** Well, if it were a case of that or just automatic divestment for everybody, I would take it as the lesser of the two. But I do not agree with it at all.

**Mr Scott:** John, just to deal with your last point, it seems to me that one of the things we tried to do when we drafted the conflict-of-interest act was precisely that, to take the issue of conflict, whether there was one, and what the penalties should be, out of the Legislature. And we wanted to do that for two reasons. Because if it remained in the Legislature, it continued to be a subject of debate which could not be resolved. Opposition parties and the government members were part of it, would not let up no matter what the facts were because they thought they had a minister on the run; and in the present process we would presumably be doing exactly the same thing. There was a little touch of that at the end of the last session.

The idea of the bill was to put the debate in the hands of an independent official, not only from the point of view of allowing the government to have it resolved there, but from the point of view of the individual minister, so he or she could say, "Well, I will go to the commissioner and ask him if I have done the right thing."

Even if you have the divestment, it seems to me one of the problems is that the Premier is going to excuse it in some cases and 31 March he is going to issue a list, "These people have to sell their construction businesses and these people don't." Is that not going to provoke the blood-sport debate that has always occurred, except it is going to focus exclusively on the Premier rather than on the minister involved? Is that going to get us out of the problem that the government members obviously want to get out of if they can?

**Mr Sweeney:** I would want to piggyback on one of your comments and that is the very nature, the competitive, aggressive nature of the Legislature is what it is. You are not going to change that. It is the nature of our parliamentary system; it is the nature of our party system. People are not being realistic when they say somehow or another we can resolve these kinds of things within that political arena. You cannot. The experience has been that you cannot. Therefore, I think it is worthwhile to get it into an independent third party, if necessary, strengthen that person's hand, whoever he or she happens to be, but I do not think it is wise to leave it within the political arena. By its very nature, the very nature of that arena, you are not going to resolve it. I feel there are times when I resented the way in which the opposition would go after some of my political colleagues, but I understood it. By God, I sat in the opposition for 10 years. I know what the opposition mentality is.

**Mr Scott:** The problem, John, though, is—and I do not want to get personal—but if you take for example Elinor Caplan, it is a blood sport. We would have done the same thing, no doubt, if Elinor had been an NDP minister. But at the end of the day, after a year and a half, Elinor was sort of totally vindicated. There was nothing that she did wrong from beginning to end. It had been a great political excitement; and the same with Chaviva Hosek. Now, is there not a virtue to having an independent person who can make that judgement quickly, fairly, hearing both sides and with finality; and independently?

**Mr Sweeney:** I believe so.

**The Chair:** That is the brief answer.

**Mr Sweeney:** Yes.

**Mr Sorbara:** He does give brief answers as well.

**Mr Scott:** Only when the questions are very properly put.

**Mr Sorbara:** I, unfortunately, have a longish question, two questions. The first one is very short. I think it will take—

**Mr Sweeney:** As the Chair said, you know that the length of the answer is proportionate to the length of the question.

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**Mr Sorbara:** In your 15 years' experience, John, in the Legislature, have you ever had a constituent or a member of the public or someone who you just happened to run into or deal with, come up to you and suggest to you that you compromise your position as a parliamentarian or as a minister?

**Mr Sweeney:** No.

**Mr Sorbara:** I have, to put that on the record, and it is an awful feeling when that does happen.

**Mr Sweeney:** I have been told second hand or third hand that somebody would like to, but they were told by someone else, "Don't waste your time." So it never got to me personally.

**Mr Sorbara:** Well, you have seen during five and a half years how the formal processes work: the disclosure process to an independent commissioner, the declaration process in cabinet. I want to tell you a little story and ask you whether you would or would not agree with me that informally this is really how the conflicts process works.

Monte Kwinter was just here as a witness. Monte Kwinter testified that he owned a piece of land, or his family had an interest in a piece of land; I tell the committee that his family has an interest in a piece of land at Keele and Steeles. This is kitty-corner or adjacent to York University. I represent the area just north of York University and, since my time as Minister of Colleges and Universities, thought that the next priority for building a subway in Metropolitan Toronto was to send a line up to York University. I have advocated that strenuously, publicly and privately and I have tried to put together lobby groups—

**Mr Sweeney:** Why does that sound familiar?

**Mr Sorbara:** Yes, because you have heard it in cabinet a million times and my little speech is on how important that

is. And I have asked other MPPs like Claudio Polsinelli and local politicians to try and build on this. When I approached Monte Kwinter privately about that: "Monte, I am trying to do this. What do you think about it?" he said to me, "Please Greg, do not talk to me about it because my family has an interest in land which is adjacent to that." And since that time, we have never had a discussion about it and he has not been part of the process of trying to focus the province's attention on this subway development. Is that not really how it works, that when you find that personally that conflicts with what you have privately, you just extricate yourself from it?

**Mr Sweeney:** That has been my own experience, Mr Sorbara. As I say, I think I tried to reflect that in my opening comments, that I just do not have any personal experience of someone cutting corners for their personal benefit. If anything, and I guess because I heard the former Premier say it so many times, "If you even think you have a conflict, you do." Do not even try to think about it twice. If in your own mind you see a sense of it, you do; do not do it. That got pounded and pounded and pounded so often that I guess it was almost second nature to the people that I worked with.

**Mr Sorbara:** Is it not the case, given your experience in Parliament, that even if you have sold everything, given the people that you meet and the places that you go, that you are always susceptible to someone coming up to you and saying, "Look, I think you should do this and this is something that politically or as a public figure is going to make you famous and great;" are you not always subject to those kind of pressures even if you do not own anything but a big bank account or a small bank account?

**Mr Sweeney:** Any constituent who feels that you can help him or her with a personal issue is going to ask you, sure they are. I got asked lots of times. Coming back to your other question, I never got asked to do something which I thought was improper or illegal, but I sure got asked lots of times, "Will you help me with this?" As a matter of fact, just before this meeting I was over seeing another minister about a local land exchange problem between a government agency and a private company. It happens to be one that everybody agrees with, including the staff of the minister. It is just a case of timing. I am still doing that today and that is legitimate.

**Mr Sorbara:** Just to be sure, Mr Chairman, I have listened to John Sweeney's testimony in all respects and none of us ever agreed 100% in cabinet on anything. We had some wonderful fights. It is almost like old times. If the two of you would leave, Sweeney and Scott and Kwinter and I could probably conduct some business, as a matter of fact. But we do not agree on everything, and I want to tell the witness that I am not in agreement with him in respect of what he says about, once being appointed to the executive council, being able to do things for his/her constituents. I think once you assume the responsibilities of a minister, you have to, unfortunately, say to your constituents, "I'm sorry. I can no longer appear for you in front of city council or in front of the Worker's Compensation Appeals Tribunal or in front of the OMB," or those sorts of matters. I think it

is a defect in our system, but I believe—and I want to tell my fellow committee members that it does not trouble me—that we put constraints on MPPs who are serving for the time being as ministers in their role in that regard. But I know that that is going to be a subject of interesting debate, and I appreciate John Sweeney's comments on it because I think that represents certainly one worthy position on that matter; and I think it is important to have that testimony.

**The Chair:** On that point, are you requiring a response?

**Mr Sorbara:** I just wanted to put that on the record and take up the rest of our time.

**Mr Scott:** We do not always end with a question mark.

**The Chair:** I have noticed. Particularly when they have already been answered.

**Mr Harnick:** If the divestiture guidelines are carried out, what should be done in terms of the deputy ministers so that all this is consistent? How far will you go?

**Mr Sweeney:** That was something that we often asked ourselves, and I must admit, Mr Harnick, we did not resolve it because of the second part of your question. If you impose that on a deputy, why not on an assistant deputy, why not on the director of a branch? As a matter of fact, both as Minister of Community and Social Services and as Minister of Housing, my staff in the field made a heck of a lot more decisions than I ever did—Paul would be well aware of this—and probably decisions which affected the lives of—

**Mr Scott:** But you were always right, weren't you? They were not always right.

**Mr Sweeney:** Let's say there were lots of times when I was thinking of making a decision, that one of my staff in the field suggested that maybe it was not a very wise decision, and they were right. I often made the correct decision but I do not take credit for it.

**Mr Johnson:** His comments are very enlightening.

**Mr Sweeney:** I can remember, Paul, very clearly, one of our area managers calling up and saying: "I heard the minister is planning to... Would you remind him of such and such?" I will not go into the details; you probably can fabricate it yourself. I said, "My God, I never even thought of that." Well, that decision just was not made.

In those two ministries, particularly in Community and Social Services, you just have to rely—but the point I am trying to make very clearly, Mr Harnick, is: Where do you draw the line? I would suggest that more often than not my area managers would make more fundamental decisions than even the deputy or I would make on a fairly regular basis, and the potential for conflict was there. I am not aware of it ever happening but certainly the potential was there. I do not know how you do it. I really do not. I would not want to get into it.

**Mr Harnick:** Then does it follow from what you are saying that if the minister and the parliamentary assistant have to divest, then it should go right down the line?



**Mr Sweeney:** I think you would have to open it up; and once opening it up, I do not know how you would ever close it.

**Mr Carr:** I just want to make one comment. I had heard since I came what a great reputation you have on all sides of the House, and having listened to you, I understand why now; so I just wanted to thank you very much for taking the time to come down here and speaking with us.

**Mr Sweeney:** Thank you.

**Mr Mills:** Mr Sweeney, I have listened and made a lot of notes about what you have had to say, and I must agree that they are very interesting, to say the least. You spoke about divestment as being absolutely wrong, and you spoke also of disclosure being good, but you also spoke of strengthening the disclosure, and I just wonder if you have got any ideas how we could strengthen disclosure to make it work without divestment. Have you got any magic solutions or not?

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**Mr Sweeney:** No. I do not have any magic solutions, and I suspect that if I did someone else would have thought about them long ago, which suggests that there are no easy solutions to this issue. It is part of the human dynamics, part of the human dilemma that we simply have to live with on a day-by-day basis.

It strikes me that you could have an independent third party who could review the assets or the investments or whatever you want to put under that umbrella of individual members and make some kind of a declaration that in his or her opinion the potential for conflict was greater here than it was there. I do not know what else you can do.

I think what we are saying—and my colleague Mr Kwinter just before me gave you a couple of examples—is that everybody is in exactly the same boat. Well, they are not. If I can reflect on this example of a member who owns a small grocery store in Kirkland Lake or Capreol or someplace being in the same situation as a member with a major investment in a large company in downtown Toronto, I think they are different. It seems to me that maybe we need somebody whose judgement we can respect, even though we might not always agree with it—much like a judge gives court decisions—that in his judgement this potentially is more of a conflict than this is, and this one we have got to watch more carefully; something of that nature.

That could be disclosed, but beyond that, no, I am sorry. I wish I did have a magic answer. I do not think there is one. I think it is something that you are going to have to continue to struggle with, and I wish you much luck in doing it. If I could just make one simple observation—

Interjection.

**The Chair:** Is that in response to Mr Sweeney or is that part of our discussion on our recommendations, sir?

**Mr Sorbara:** No. It is part of the discussion, but I do not want to interrupt the flow between my friend Mills and my former colleague Sweeney.

**The Chair:** I appreciate your not wishing to interrupt here.

**Mr Sweeney:** I presume, Mr Mills, that most of you realize that there is “no final answer to this issue.” Some opposition members over the last five years were suggesting that all you have got to do is have a law and that solves the problem. There were guidelines before, and then we had “a law,” and now we have additional guidelines. The comment that was made previously was that guidelines were worthless; you had to have a law. Well, we had a law. Someone could say the law was not a good law or it was not strong enough or something.

I presume you all recognize that no guideline, no law, no regulation solves this problem. It is part of the human dimension you are going to have to grapple with, and if any Premier or any cabinet or any government or any Legislature thinks that they can put something down on paper that is going to save them henceforth from ever having to deal with this issue again, that is not practical either. You keep refining it. You keep coming closer and closer. You build upon your experience. You can say: “We’ve got this piece of legislation or this guideline or this regulation, and for these two or three reasons it does not seem to be working. We’ll refine it and make it better.”

That is reasonable. There is nothing wrong whatsoever with what you are going through; this is a very healthy process. But I submit to you that a year from now, two years from now, three years from now, you will be back here again, no matter what you come up with; and expect it.

**Mrs Mathyssen:** Mine is not a question per se, but I would like to point out for the record that twice today there has been a misconception put forward that spouses would be bound by the same conflict-of-interest rules governing cabinet ministers and PAs. The Premier made it very clear that, in response to the realities of 1991, spouses are not to be unreasonably bound. In other words, spouses may enter into contracts with the government as long as those are open to competition. If we look at guideline 9(a) that is made very clear, and I wanted that to be on the record since twice it has come up.

**Mr Harnick:** Yes. The Premier also referred to a letter that he wrote and in that letter he indicated quite clearly that a marriage was like a partnership.

**Mrs Mathyssen:** Yes, but Mr Harnick, had you been listening carefully, you would have known that he said very clearly that those were his views then and he had reconsidered in light of the realities of 1991 and the differences in spousal relationships in terms of business dealings.

**Mr Harnick:** I think you had better read that letter.

**Mrs Mathyssen:** I did, Mr Harnick, and I think perhaps you should acquaint yourself with what the Premier said.

Interjections.

**Mr Morrow:** I do believe the government has the floor at this point. Irene Mathyssen had the floor.

**The Chair:** She did have the floor. Are you finished, Mrs Mathyssen?

**Mrs Mathyssen:** Yes.

**Mr Huget:** I listened with interest to Mr Sorbara’s comments in terms of a conversation he had with Mr Kwinter. That conversation and the resulting action of both

parties showed to me that there is a certain amount of honesty and integrity among elected officials. My question is that one of the proposed guidelines calls for, where there is conflict of interest and where a member of cabinet has stated he is in conflict of interest, the statement that he is in conflict of interest to be made public, and that would be done by the secretary of cabinet. Given the fact that, although many of the actions and discussions and decision-making processes that are undertaken in this place are done in an honourable fashion and aside from that the public still has the perception that they are not, would something such as that guideline 14, which calls for public disclosure when a person is in conflict of interest, help the perception of the general public of the political process, and would it reinforce that many of the things we do are in fact done in a realm of integrity and honesty? I would like your comments on that.

**Mr Sweeney:** I think part of the problem is that we are our own worst enemies. I guess it is partially reflecting all the things I tried to say earlier. We—excuse me; it is “you” now. It used to be “we”—members of the Legislature build the thing up to more than what it really is and I think every time you add to that, if anything, you simply make the public more suspicious. I am not talking about hiding things, but why as members of the Legislature do you and why did we so often go overboard as we did? You are just saying to people: “We’re a bunch who can’t be trusted. You’ve got to put shackles on us. That’s the only way you can trust us.” I do not think we should do that kind of thing. I think we should stand up as often as we possibly can and simply say, “We are honourable people.”

One of the standing rules in the House which was entertained by the Speaker over and over again is that it is presumed that you are honourable members. That is the presumption; not that you are dishonourable. Therefore it is only when you do something which is dishonourable that the case proves otherwise. So therefore I guess I would be opposed to anything that adds to that dimension of untrustworthiness, because I just do not believe it is the fact. Obviously if a person feels he has a conflict, states that to someone, whether it is the conflict commissioner or the Premier, and it is demonstrated that he or she has—certainly I agree with you, if that is what you are asking. But if you are saying just the fact that there might be a conflict, does that become public? I would think not and I am not even sure whether that is what you are asking or not.

**Mr Huget:** No. I was referring specifically to when there is an identified conflict and that that be made public. My thought was that perhaps the public would feel much more comfortable having the knowledge that someone has declared himself in conflict of interest, and I see that as a positive part of the process. My question was really: Do you think that is derogatory where there is an identified conflict?

**Mr Sweeney:** No, that would be part of what I would cover under the heading of strengthening the disclosure part of the process, and I think it was Mr Mills, if I am not mistaken, who raised that question before. I would certainly be in favour of doing that kind of thing, but when it

is there, not when it might be there or it could be there or, well, let’s think about it. I think all that stuff should not be. I must say that on a couple of occasions, mainly because of my family members—I have six married children who are involved in various business of one kind or another—I had to go to Justice Evans and say: “Look, I understand this is the situation with one of my kids. Does that create a conflict for me? I haven’t a clue whether it does or not. I just do not know. Would you please tell me?” In every single case it happened to be not. Quite frankly, if not just for my sake, on behalf of my children’s sake—in this case, my adult children—I would not want that to be public. Three of my children hold responsible positions and I do not think that should be in the public domain, personally. I wanted to be sure that there was not any so I could tell them. Now, if there had been, fine; disclosure, no problem with that at all.

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But I sense from some comments earlier that people feel that even if there is a suggestion of it it should be public. I think one of the earlier questions was, every time that a minister makes a declaration in cabinet that there could be a conflict, and he leaves, does the clerk of the cabinet then come out and tell the scrum, “Oh, I have to tell you that minister so-and-so had to step outside because”—no, I do not think you should. I think it should be part of the cabinet record, which it was, and if it ever becomes an issue later on, the clerk can say, “Look, the cabinet record for such and such a Wednesday morning says that minister so-and-so stepped out during this discussion.” Period. That is on the record. But I cannot see going out and making it a public issue when there is not an issue.

**The Chair:** Mr Huget, are you finished?

**Mr Huget:** Yes.

**The Chair:** We can continue to extend, but I would appreciate if we could wrap up well before—

**Mr Sorbara:** We have seven more minutes of questions.

**The Chair:** Seven or 10 questions, you say?

**Mr Sorbara:** Seven or eight minutes of questions.

**Mr Scott:** See if we cannot focus on one other thing. It is perfectly natural for people to think of conflict of interest in terms of assets, and divestment as a solution or perceived as a solution. I do not think it is going to be, but it is perceived as a solution to the asset conflict. The asset conflict is only a minor part of the problem and the rest of the problem has not been addressed and probably cannot be, but look at this situation. Let’s assume a nurse is elected to the Legislature and the Premier wants to make that nurse the Minister of Health. In the present climate when nurses’ salaries are obviously going to be a very important issue for the government of the day, the conflict that is inherent in that appointment is to me obvious and any opposition party—if the nurses’ salaries go up too much and the deficit increases on account of it—is going to raise royal hell, and there will be a conflict. Do not think there will not because assets are not the only basis for a conflict.



Now, the nurse cannot get rid of his status as a nurse, but surely what you want is a forum in which the Premier can say: "I propose to make this nurse the Minister of Health. Mr Commissioner, is there any conflict?" And he will say, "Yes, only in these circumstances," and the minister will have to deal with all these things but cannot deal with this particular kind of issue concerning this hospital where he used to be a nurse. That puts the thing beyond doubt, beyond argument, but to think that it is only assets is, it seems to me, a complete misunderstanding. What if a social worker wants to become the Minister of Community and Social Services?

**Mr Johnson:** Good idea.

**Mr Scott:** No, but he should not be excluded. He should not be excluded as he will be on a conflict basis, and the Premier should have the opportunity to say to a commissioner: "I am going to make this appointment. Anything wrong with it?" It might even happen that someone who knew something about mining, like a miner, might be a good candidate to be Minister of Mines.

**Mr Sorbara:** Oh, heavens, no.

**Mr Scott:** What is wrong with that? But you need a commissioner who is going to give the Premier what he needs, which is the certificate that says, "That's okay." Is that not why the commissioner is there in part?

**Mr Sweeney:** Yes, it is, but I think also, if I can go back and comment on the role of the Premier, I think that it is certainly incumbent upon the Premier to be very careful of the kind of appointments he makes. If I can use a personal example, prior to coming into the Legislature I was the director of education for a separate school board. You might remember that in 1985 one of the biggest issues in this province was whether or not there should be funding for separate schools or extended funding for separate schools. None of you will be surprised that premiers tend to speak to some of their members and say: "You know, I'm thinking of putting you in the cabinet. Do you have any preferences?" Well, again, you probably would not be surprised if I said, "Yes, I would be interested in being the Minister of Education." Well, the Premier made it very, very clear that, given my background, given the current issues of the day, that would not be an appropriate appointment and I agreed with him. I did not like it, but I agreed with him.

I remember when Bette Stephenson was the Minister of Education under the Conservative regime and I do not think there was anyone in the Legislature who knew more about health care than Bette Stephenson. She was the former president of the Canadian Medical Association and the Ontario Medical Association. She was a practising physician, etc, and I remember, because I was her critic for a couple of years, saying to her, "How come, Bette, someone like you would not be named Minister of Health?" It seemed logical to me. She said there was no way that Premier Davis would do this. He felt that it was inappropriate.

**Mr Scott:** But why do we create a system—

**Mr Sweeney:** No, all I am saying is that there is that element, not only do you need a sounding board when there could or could not be a conflict, but sometimes you

just need the political smarts of the Premier not to make certain kinds of appointments.

**Mr Scott:** But are we being smart over the—I am sorry?

**The Chair:** Mr Scott, could you allow your colleague to ask the question?

**Mr Sorbara:** No, I want my colleague Scott to finish, I just have a small thing.

**Mr Scott:** Are we being smart in trying to erect a conflict system which in effect says that any person who has expertise or talent or status of knowledge is precluded from doing the very job where those things can be most useful?

**Mr Sweeney:** Oh, no.

**Mr Scott:** Now, the Attorney General is a lawyer. I think the statute says he or she has to be, but why should Bette Stephenson not have been the Minister of Health? I understand the political problem, but that is what the commissioner is for, to let the Premier out of the political problem if he wants to make the choice.

**Mr Sweeney:** But I think Bette's observation to me, Ms Stephenson's observation to me, was that because of her very high-profile position within the medical association, it would not be deemed to be a proper appointment, much like the nurses' one that you indicated again. If I can go one step further, before I decided not to run in the last election, the Premier and I discussed once again my being the Minister of Education. He said: "I don't have a problem any more. That issue is over now." So the Premier has to have some discretion.

**Mr Scott:** All these discussions with our Premier, we never had these discussions.

**Mr Sorbara:** You were a second-class minister. Permit me, Mr Chairman, as we are wrapping up, I just want to take John Sweeney back to his testimony earlier on when he said he did not have any magic answers in respect of expanding disclosure. I am not sure if I have a magic answer either, but it is one that I want to put before this committee and I want to put before the witness while he is here, to get his view of it.

**The Chair:** Do you want your views on Hansard?

**Mr Sorbara:** I am sorry?

**The Chair:** Your lack of a magic answer?

**Mr Sorbara:** Well, I do not know. There are no magic answers in this business, Mr Chairman, but we heard Mr Kwinter speaking earlier today of the Senate hearings committee down in the US for members of cabinet. We have in this province, I think, a pretty good system of disclosure. We have to go through just about—we have to go through our kid's bank account and find out what amount is in it on such-and-such a day and get all that information into a document and get it before a commissioner, and that commissioner reviews it, along with very competent staff, and then that becomes part of the public record.

It may well be that to enhance even further the disclosure process and to give it more public profile, it may well be,

Mr Chairman, that a committee like this committee, or the standing committee on public accounts has an opportunity for an hour or two to have a minister who has made that disclosure statement, sit before the committee and answer questions in respect of that disclosure statement.

I know that I, while I was serving on the executive council, would not have been offended by any questions about any matter that was in my disclosure statement. I ask Mr Sweeney, Mr Chairman, whether he thinks that having a minister come before a committee of the Legislature and testify and answer questions publicly about what his or her assets are would be a way of enhancing disclosure and making it a document that is more—

**Mr Poirier:** Transparent.

**Mr Sorbara:** —more transparent, I thank my friend the member for Prescott and Russell, to the general public.

**Mr Sweeney:** The member for Prescott and Russell was always effective in both languages. I would have a problem with it personally, I guess maybe because it strikes me as being more attuned to the congressional system in the United States, which I have never really agreed with. I am sufficiently a nationalist to think that our system is better, personally.

**Mr Sorbara:** I am not suggesting—

**Mr Sweeney:** As I recall, the information we were asked to disclose to Justice Evans, it was at his discretion what would then be disclosed further to the public and we clearly understood that we put down everything. We dotted every i and crossed every t because we respected the judgement call of Justice Evans, or whoever would occupy his chair that, unless there was some obvious potential problem, it would not be part of the public domain.

No, I would not. I understand where you are coming from, but personally it is not something that I would find supportable. I think we are getting too much into this congressional-committee, open-hearings kind of system and I am not—let me stop there.

**Mr Sorbara:** Just to clarify, Mr Chairman—

**The Chair:** You have been very generous in coming down and giving us your experience.

**Mr Sorbara:** [Inaudible]

**The Chair:** So do we all, Mr Sorbara, so do we all. Thank you again, sir.

**Mr Sweeney:** You are welcome, thanks, everybody.

**The Chair:** Recess until 1:30.

The committee recessed at 1151.



## AFTERNOON SITTING

The committee resumed at 1334 in committee room 2.

**The Chair:** Order. We are resuming hearings in regard to the conflict-of-interest guidelines.

CHAIRMAN OF MANAGEMENT BOARD  
OF CABINET

**The Chair:** We have before us Frances Lankin. Frances, we have approximately half an hour. I think we might stretch on a minute or two longer than that, and obviously the members probably have some questions for you. If you have a statement, please feel free to start with that.

**Hon Ms Lankin:** I only have a few brief opening comments to make. In general I am pleased to be here and to present before the committee with respect to the conflict-of-interest guidelines. I am sure we are all committed equally to ensuring that the activities of government are conducted efficiently, ethically and with integrity. When I come to looking at these guidelines and the work that is before this committee with respect to your recommendations about whether those get incorporated into the legislation, how that should happen, I come to it with a view of an outsider in a sense because I have not been in the Legislature before.

One of the things that I experienced as a member of the public, and that I know I heard from people and I feel is a general concern out there, is that there has been a lack of confidence that the public has in elected politicians and in politics itself. I think that we all have a collective job to try to restore integrity to the process and to the professions of public service that we enter as politicians. So I see what we do around conflict-of-interest guidelines for cabinet ministers and parliamentary assistants as an important part of that. How that affects other members in the Legislature is the challenge that you as a committee have in terms of looking at the integration of these issues.

There are some concerns that I have heard that have been raised with respect to the guidelines that are important for you to consider, and I think it is important for you to consider how the public will be looking at this. A number of people have raised concerns about whether these guidelines are too stringent and whether or not they will dissuade people from running. One of the things that maybe slants the way in which we look at it is that the previous government, when it was elected in 1985, did not really have an expectation of being elected to form a government. When we were elected we did not have that expectation. So I think that probably most of the people who ran did not have in their mind what sorts of obligations might be on them if they were to find themselves in cabinet.

So, had these kinds of guidelines come into place immediately following the 1985 election or as they are now, there may be some people who find that difficult because it is unexpected; but I think that if these guidelines are clear and if they are in the legislation, it is clearly set out, the people know in advance, they have that understanding about what it means to run for public office and about what it means to take on the responsibilities in government in a cabinet position.

The view of the public on this is incredibly important for us to keep in mind and for us to address with some changes that are seen. People have talked about the perception of impartiality and the perception of integrity being as important as the concept itself, and I think that the public need something from us as legislators at this point in time that says we are going to do things differently, collectively. It is not a partisan issue in that sense.

From my portfolio areas, the interest that I have in the deliberations of this committee is with respect to the comments that the Premier has made about deputy ministers and how they should be covered with respect to conflict of interest. There are certainly conflict-of-interest rules for public officials, both elected and unelected, now, and they are currently dealt with in several ways. No doubt we all have a general obligation under the criminal law, and that can come into play.

But with respect to the public service, the Public Service Act has an oath of office in secrecy and an oath of allegiance and it addresses issues such as political activities of crown employees and other areas. Regulation 881 in section 20 of the Public Service Act deals with outside work or business undertakings that may be deemed to be a conflict of interest and requires employees to disclose to a deputy minister such conflicts. There is also the Manual of Administration and it sets out conditions of employment relating to conflicts of interest.

The Management Board of Cabinet directives address how to handle agreements with services of former officials, as well as spelling out how information obtained as a result of an individual's government appointment may or may not be used for personal benefit. Then, of course, there is the Members' Conflict of Interest Act, and that relates to members, but it also prohibits certain actions by all Ontario public service employees in awarding or approving such things as contracts and benefits to former ministers. There are now the Premier's guidelines on conflict of interest for ministers and their parliamentary assistants. These guidelines are certainly recognized as going quite a bit further than the existing Members' Conflict of Interest Act.

As I understand it, one of your tasks is to examine the Premier's guidelines and to determine whether part or all of them should be incorporated into the conflict-of-interest rules and how that will also deal with non-elected officials. As you know, the Premier told the House on 12 December that his guidelines would not apply to deputy ministers or government appointees, and he said that conflict of interest for these people could be dealt with in another way, for example the upcoming amendments to the Public Service Act. Many of you will know that this has been an item under discussion for several years in the government; this is not a new issue; and I think that there are some questions that get raised for your committee to answer.

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For example, should deputy ministers be subjected to the same requirements to disclose, and what about the requirements to divest? How far do we go with respect to

deputies? Should it be the same as those that are faced by ministers and PAs? There are some issues for us to address. Is there a difference between an elected position and an employment contract, an employment position? Should there be an obligation to disclose, but should that disclosure be made public? I think we have to work through that and understand it and I would be interested in the comments that you have on that.

I would be interested as to whether or not your committee believes that any requirements that would cover deputy ministers should be contained within conflict-of-interest legislation or, as has been thought about, within something like a code of conduct under the Public Service Act. I think there is also an issue of: Where is the cutoff? Whatever requirements we require of deputies, whether they be the same or different than we require of ministers and PAs, should that extend further down into the public service and how far? Where is the cutoff point? Are assistant deputy ministers covered?

I do not have the answers to these things and I am starting to review the work that has been done already with respect to the concept of a code of conduct and, of course, it has been talked about by the Ontario Law Reform Commission. The former Attorney General was very interested in this and there has been some discussion work that has gone on, but it has not come together in terms of any specific direction. There are a lot of issues up for grabs. This is one area now, as a result of the Premier's guidelines, that I think we need to look at and I would appreciate your own comments on that.

In what exists already, the regulation does require an employee who perceives a conflict of interest to advise his or her deputy and abide by the advice given. Of course, that is, again, not public, but that is a requirement right through the civil service at all levels. Reliance is placed on the employee to identify a conflict of interest, but the circumstances that may give rise to a conflict are not clearly expressed. From a corporate employer point of view, I think we should be moving to the best we can to make sure that our expectations are clear for our employees so it is not ambiguous and that it does not rest with them to figure out.

The Study of Management and Accountability in the Government of Ontario, which was issued in 1985, recommended the establishment of a code of values. The Report on Political Activity, Public Comment and Disclosure by Crown Employees, issued by the Ontario Law Reform Commission in 1986, recommended that a code of conduct be enacted by statute. Codes of conduct and ethics are commonplace in many major industries, provinces and major municipalities and there are three guiding principles that must be taken into account in conflict-of-interest policy formulations.

First of all, I think it is very clear we would all agree that crown employees should derive no private gain from their position of public trust, either during or, in most circumstances, after their tenure. So that also brings up the issue of post-employment considerations. Crown employees should confer no benefit on their close personal associates by virtue of their public employment. Even the appearance of potential conflict of interest could affect public confidence

in the government service, so what steps need people take in that situation?

So it is a changing environment and there are new trends that are faced by government and I think it adds some urgency, along with the discussions before you, to the need for a code of conduct. Perhaps that code should include clearly conflict of interest, although again there are other pieces of legislation that we could rely on with respect to very senior officials like deputy ministers.

The Ontario public service is larger and more diverse and more dispersed than it was 25 years ago when the legislation that governs these things was created. I think that it is important for us to develop and communicate a set of values to guide work-related conduct, and I am currently, within the Human Resources Secretariat in Management Board of Cabinet, working towards being able to bring something forward before cabinet and before the Legislature on these issues. Certainly government activity has greatly expanded, especially in areas such as regulation, transfer payments, direct delivery of services, joint ventures with the private sector and incentives to stimulate economic activity. Public servants are more directly involved in roles that require adjudication, evaluation and allocation decisions, so we need to consider how best to deal with conflict-of-interest rules.

One way would be to eliminate the current section of regulations that relate to conflict of interest and integrate them into the code of public service, as I indicated, which will also include rules on other things. It could be on political activity, on workplace behaviour, and on other ethical issues. Included in such a code could also be references to the obligation to act within the law, post-employment provisions, secondary employment while in the public service, prohibition of preferential treatment, conflicts between duties and personal interests, use of disclosure of confidential information, dealings with family and close personal relationships, receipts of gifts, etc.

I guess there is the question of what the benefits would be if we go that route. Clearly there would be a better understanding for crown employees of what constitutes a conflict of interest, so I think that is important. I think it has got to be set out clearly for people so that it should not be a guessing game.

The question of how far we go down into the organization with very stringent conflict-of-interest guidelines is a question up for grabs and also how we relate deputies to elected officials. Whether there is a difference between an employment contract and an elected contract, I think, is up for grabs for us to determine and for you to determine.

The other question then is: If deputies and/or other senior officials are to be treated the same as members or cabinet ministers or parliamentary assistants, should it be contained within the one legislation or should it be contained within this route of the Public Service Act? Of course, there are ancillary issues that we will be dealing with in general with respect to a code of conduct, or whether it should be under regulations, under the existing act, an amendment to the existing act, or whether it is simply a directive pursuant to the Management Board of Cabinet Act.



So there are a number of things that we will be examining and looking at and I am completely open on a number of these issues. I have not got to a point of understanding myself, in this new portfolio, to have definite opinions about the direction to go with this and I look to your comments and ask you particularly to keep in mind my question of: Should there be a difference with respect to employees of the government versus elected politicians?

**The Chair:** I would like to, because we have three ministers this afternoon, start the rotation at different points, so first with the official opposition this time and then next would be the Conservative Party and then finally with the New Democratic caucus. So if we could start with Mr Sorbara and then Mr Poirier.

**Mr Sorbara:** I do not know why you want to do that, Mr Chairman, but I guess you are the Chair and we will do whatever—

I want to begin by thanking the minister for agreeing to accept our invitation to appear before the committee. Actually, we had invited all of your colleagues to come and there was a point when we thought all of your colleagues were going to come, but the realities of 6 September are that we get outvoted on this committee and we were voted down in that regard. But I am glad that you have agreed to come before us.

I do want to say that, although I have listened attentively to your comments, most of which were directed to the issue of conflict of interest of members of the civil service from the deputy on down, I am going to be entreating this committee not to get into that investigation. I think we have a very complete agenda, thank you very much, with the guidelines that the Premier has presented to us for consideration, although I think we could say that that expands our mandate and allows us to look at the civil service. I think probably the appropriate course would be to allow you and your ministry officials to bring proposals before cabinet, for cabinet to consider those and then bring them to the Legislature to be considered separately. I, for one, do not agree, in other words, that they should be incorporated into the existing act, that is, the Members' Conflict of Interest Act, or that when you read the guidelines that the Premier presented a few months ago there is very much room in those guidelines for considering those other issues, which are very significant, no doubt, but which would get us into a course of analysis and require witnesses that we have not even provided for at this point.

**Hon Ms Lankin:** I think that is a valid comment, Mr Sorbara. I would just say that if you have a general opinion like you just expressed that it belongs outside the Members' Conflict of Interest Act. That is useful in and of itself. I think that is what the Premier has suggested, but I know your committee asked the question of him with respect to deputies and I raise that in terms of the area of interest for me with respect to my portfolio. If the committee has general comments, terrific, but if not, that is fine.

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**Mr Sorbara:** You have obviously read the guidelines that the Premier has presented in the Legislature and referred to us, and you have no doubt read the Members'

Conflict of Interest Act and complied with that act through a disclosure statement to the commissioner.

**Hon Ms Lankin:** Yes.

**Mr Sorbara:** I take it that has all been completed. I want to refer you to the sections of the guidelines which require divestment of assets. I think that you did not have any assets to divest of, is that right, under the guidelines?

**Hon Ms Lankin:** I think it would depend on what you would call assets. In terms of personal interest, what I did divest myself of was a quasi-employment relationship and a—

**Mr Sorbara:** Of course, you have to do that.

**Hon Ms Lankin:** Well, I had a leave of absence and I think that it is possible, I am not sure, to maintain yourself on a leave of absence. I chose to sever employment relationship. What I also did was choose to withdraw my portions of an employer-sponsored pension plan, and we removed that and put that into an RRSP.

**Mr Sorbara:** Do you think that you, personally, if you had assets—say you owned, I do not know, a small business or a butcher shop or an investment brokerage house, do you think if you had had to disclose that but not sell it, that is, not divest yourself of it, you personally would have been tempted to prefer your private interest over your public responsibility?

**Hon Ms Lankin:** I think not, given how I acted in the actual case. It is very difficult to respond to hypotheticals, but we have the facts in front of us.

**Mr Sorbara:** The law says you are not allowed to do that. The current act says, I just want to quote it for you, it prohibits a conflict of interest that is participating in a decision when you know that in making that decision there is an opportunity to further your private interest. Would you do that?

**Hon Ms Lankin:** Participate in a decision?

**Mr Sorbara:** Yes. Would you—

**Hon Ms Lankin:** Or would I divest myself—

**Mr Sorbara:** —use your office to further your private interests?

**Hon Ms Lankin:** Can we just go back. I think you asked me whether or not I would have been tempted to divest myself?

**Mr Sorbara:** No, no, I asked—

**Mr Harnick:** Assuming you did not divest.

**Mr Sorbara:** Assuming you did not divest, would you be tempted to prefer your private interest to your public responsibility?

**Hon Ms Lankin:** I believe that I would not, but I believe that the public might have trouble believing that, and that is one of the problems we are dealing with. I think that it is important that the guidelines and the laws be very clear and the public have confidence—

**Mr Sorbara:** Okay. Minister, I just want to know about your own—what is your view of your cabinet colleagues? Do you think any particular one of them or any of them would be likely, if they were allowed to maintain assets in some sort of management trust responsibility, be

tempted to make decisions that would line their own pockets rather than discharge their public responsibility?

**Hon Ms Lankin:** I am not going to speak ill of my colleagues or of your government's former cabinet or other cabinets in general. I think that again you are giving me a hypothetical situation. What I believe strongly—now this is from coming from outside the Legislature—

**Mr Sorbara:** Okay.

**Hon Ms Lankin:** I am new to this, I was not a member before this election. So, what I do believe is that the public sees that separation as one that is very difficult to make and that the public, at this point in time, does not have confidence in us making that separation.

**Mr Sorbara:** I appreciate, yes, but politicians have lived with that since we created public office. You are the minister—

**The Chair:** Excuse me, Mr Sorbara, Mr Poirier also had a question.

**Mr Sorbara:** Yes, I realize that. I only have one final question. You are Minister of Government Services as well, is that right?

**Hon Ms Lankin:** Yes I am.

**Mr Sorbara:** So, you are responsible in the cabinet for all government office buildings?

**Hon Ms Lankin:** Yes.

**Mr Sorbara:** If the cabinet directed you as Minister of Government Services to sell a building that you owned in downtown Toronto within 60 days, what would be the impact of that on that sale?

**Hon Ms Lankin:** That the Ministry of Government Services owns?

**Mr Sorbara:** If you as Minister of Government Services were ordered to sell a building within 60 days, that is, completely liquidate that asset within 60 days, what would be the probable impact of that directive on the sale of that building?

**Hon Ms Lankin:** I understand what you are getting at. You are wondering whether individuals will suffer financially as a result of being forced to liquidate assets.

**Mr Sorbara:** What would happen?

**Hon Ms Lankin:** I think that, depending on how it is handled, there could be a devaluing of the asset and I think that is an issue that needs to be looked at.

**Mr Sorbara:** But is it not the fact that it would be a distress sale and you would be open to the most ridiculous of prices. In other words, there would be a significant drop in value of that asset if it became known that you had to sell it in 60 days?

**Hon Ms Lankin:** I am not sure that I have enough information to answer you, but what you are saying does sound logical.

**Mr Sorbara:** I defer to Mr Poirier.

**Mr Poirier:** I think I can understand where the Premier is coming from about divestiture. This is my fourth mandate, seventh year. I know for a fact that no matter what you do or do not do, somebody out there will have or

form an opinion as to their perception of what we are or are not. In my first year I had a lot of purple blood about that, but after a while either you accept it or you go crazy, and I have chosen to, I think—

**Mr Sorbara:** Do the latter.

**Mr Poirier:** Well, I had a good head start in that department, because I chose to—

**Mr Sorbara:** Now we are all following your example, my friend.

**Mr Poirier:** That is right. I thought I was following your example, but that is another story.

Obviously one can bend to public perception without any limit, if one wants to really go that far, and from the testimonies we hear from members who have been here—who are not here any more—for 15 years, like this morning, Mr Sweeney, and whoever, I think we know that first of all we are all honourable members. Second of all, people get elected on the platform of what they want to do, and also what they are, as this person or whatever. People, when they elect members, understand that they have a certain amount of wealth, non-wealth, stature or whatever they have at the time they get elected. Then they expect them to serve, maybe in government, maybe in cabinet, maybe as parliamentary assistants or a simple back-bencher, it does not matter; we all serve.

Are you not afraid, because of the cost to the individual, where you are going to see in the future, careers that are not going to be lifelong, 30-year political careers—you are not going to see that any more, the members who may be in the cabinet one term or two terms, and PAs also; the horrible impact, economic cost, because of what they have for divestiture, in the very same context that my colleague has just made? Do you think people will appreciate the economic loss that members have, just to divest, when they are presumed to be honourable members to start off with?

**Hon Ms Lankin:** It is debatable about whether the public presumes that, to start off with.

**Mr Poirier:** Fair enough, but we do not doubt it.

**Hon Ms Lankin:** But I think that there is a real issue about whether or not this restrains a whole range of people from running. There are personal choices that are to be made when you choose to run for public office. For example, I have not heard and I do not know which side it falls on with respect to my cabinet colleagues, whether this is an onerous task that people are facing; I have not heard that.

I know that I made a decision which, with respect to my own economic conditions, was a major economic decision for me, but I felt comfortable doing that because I felt that was important in terms of mitigating any perception of a conflict of interest. I do not know that I agree that this would be a barrier to a lot of people to run.

When people make a decision about public service, they make a decision about the length of hours they are going to put in, how much time they are going to be away from their family, for example. A number of onerous parts go along with the job of being an elected politician, and I think that there is a more onerous task or level to be met as you take on positions like a cabinet minister in a government.



If it is clearly spelled out, if people understand that, people will make those decisions and I do not see that it will necessarily be a barrier. I do not know that it would prevent a lot of people from running.

**Mr Poirier:** But if you do not—

**The Chair:** Mr Carr?

**Mr Carr:** Charles, I think, was first.

**Mr Harnick:** You indicated that you read the guidelines and no doubt you have discussed them at some length with the Premier.

**Hon Ms Lankin:** Within cabinet we had some discussions.

**Mr Harnick:** I would think they were thorough discussions; is that correct?

**Hon Ms Lankin:** If you are asking me if I can quote these as a result of discussions, no, but I am—

**Mr Harnick:** Obviously discussions so that everybody understood what those guidelines entailed?

**Hon Ms Lankin:** Yes. We certainly had, once they were issued, in attempting to understand ourselves how they would affect us, and we have had discussions previous to these guidelines around the act itself with the commissioner and since. If any of us needed advice we have been able to seek that from the Premier.

**Mr Harnick:** Have you in your discussions discussed whether historically it is necessary to implement guidelines that force people to divest their interest in various assets?

**Hon Ms Lankin:** I personally have not been a party to a discussion of that nature.

**Mr Harnick:** To the best of your knowledge, has there ever been anything that has taken place in this Legislature that indicates people have to divest in order to do their job properly?

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**Hon Ms Lankin:** I do not know the answer to that. As I indicated, I am new to the Legislature.

**Mr Harnick:** Tell me this, why is disclosure not enough?

**Hon Ms Lankin:** I think people have a sense that even if you put something into blind trust there is still an active interest there. I guess what has happened in the past is there are some members who have perhaps acted in what they thought was an appropriate way by disclosing and/or putting something into a trust, and then you find out that in fact there is some connected active interest. I think it really poses a question for all of us as legislators and for the public, about having clear guidelines that people know and understand, and the rules are clear up front. Disclosure, I think, is not enough to make it clear what your ongoing relationship is to those outside interests.

**Mr Harnick:** I would agree with you if you could tell me specifically where disclosure has failed, and you cannot do that.

**Hon Ms Lankin:** No, I cannot, and I think that is an interesting thing, because even though I cannot—as I said, I am new to the Legislature; I have not experienced that.

As a member of the public, prior to 6 September, I surely had the perception that this sort of thing was necessary.

**Mr Harnick:** All right, then let's talk about some of the other aspects of public perception. Let's take your own situation, for instance. You were involved, as I understand it, with the Ontario Public Service Employees Union.

**Hon Ms Lankin:** Yes, that is correct.

**Mr Harnick:** And you are now, as a cabinet minister, involved as really the person who is the management person in authority.

**Hon Ms Lankin:** Right.

**Mr Harnick:** I perceive that, as a member of the public, as a conflict of interest.

**Hon Ms Lankin:** What I bring is a knowledge and understanding beyond which any of my cabinet colleagues have at this point in time with respect to those issues.

**Mr Sorbara:** You said we have to satisfy the public.

**Mr Harnick:** We have not satisfied the public's perception.

**Hon Ms Lankin:** Could I continue to answer the question?

**Mr Harnick:** No, you have answered the question.

**Hon Ms Lankin:** No, I have not. I would like to continue at this point in time. I believe I bring a certain set of perceptions that are valuable to that job. I also believe that I took steps with respect to divestment in terms of having a contractual right for a leave of absence. I severed employment, having interest in a pension plan which could have been left there. I took my money out and in fact, therefore, lost the employer's portion of pension contributions. So I divested myself of those interests so that in fact it would not be perceived that I had an ongoing pecuniary interest with that organization.

**Mr Harnick:** Let me just stop you there, because I think it is more than just a pecuniary interest. We have had members of this Legislature who have been doctors—

**The Chair:** Have you finished your response?

**Hon Ms Lankin:** Yes.

**Mr Harnick:** We have had members of this Legislature who have been prominent doctors and prominent in medical associations. They have come here and stopped practising medicine, they have withdrawn from those associations, yet they were never desirous of being in a position to be the Minister of Health, because of past history and because of public perception. You cannot ever deny that you were not involved with the union. You can sever all your ties with them, but history says that the same people that you stood shoulder to shoulder with—you are now in a different position but with those same people. How does that affect the public's perception?

**Hon Ms Lankin:** I think the public expects me, as a New Democrat and a New Democrat before I was an employee of OPSEU, to come to this job with a perception that workers' rights are important and that workers' rights should be considered in a fair management approach. I think that is what I bring to the job. The rest will be judged as I perform my duties.

**Mr Harnick:** So in other words, what you have just told me, as ludicrous as I think it sounds, is that as long as you are a New Democrat, you have the virtue to stride over, to leap the bounds of conflict of interest in terms of public perception.

**Hon Ms Lankin:** No, I think you misunderstood what I said.

**Mr Harnick:** No, I have not misunderstood a thing. Front and centre is the fact that you are a New Democrat and therefore you have a licence on virtue and therefore the public will not perceive your prior life and your life now as being in conflict.

**Hon Ms Lankin:** Mr Harnick, that is a complete misunderstanding of the point that I made.

**Mr Harnick:** Well, those are your answers.

**The Chair:** Mr Harnick, I will remind you that there is an obligation to respect witnesses, whether they are politicians or not, sir.

**Mr Harnick:** I only build on what the witness has said. In many ways, Mr Chairman, this is a game of words, and those are her words.

**Hon Ms Lankin:** Well, Mr Harnick, I would suggest that you have—

**Mr Harnick:** I only repeat her words.

**Hon Ms Lankin:** —misunderstood and misconstrued exactly what I said.

**The Chair:** You may well repeat her words, sir, but I would suggest you show some respect. Mr Morrow.

**Mr Morrow:** Thank you very much, Mr Chair. First of all I would like to—

**The Chair:** Excuse me, I am sorry, I thought you were deferring entirely to Mr Harnick, Mr Carr. If you could, perhaps one or two brief questions.

**Mr Carr:** He is wanting my time, but in the interest of calming him down, maybe I should go ahead.

I heard this morning from a Mr Sweeney along the same line. He said that he was not allowed in the cabinet because he was director of education, and I am wondering what is going to happen if, in fact, the new wage settlement gets very high with the Ontario public service. Is it not going to look bad, regardless of what you do, to the public, when the settlement comes down? I am wondering how you are going to reconcile it when it comes down. If you give too high a wage, they are going to say you caved in, and I am just wondering if you thought how you are going to handle that.

**Hon Ms Lankin:** I am not sure if this is clearly on the topic of your views of the conflict-of-interest guidelines. However, I will answer.

**Mr Carr:** It is about integrity. We talked with the Premier about integrity, which is a purpose.

**Hon Ms Lankin:** I will answer that. In fact, if they come in too low—

**The Chair:** Unless it is appropriate, why open this?

**Hon Ms Lankin:** I think that it is equally understandable that if wage settlements come in too low or reasonable, it will be said by some people that I was too hard on the

employees because of my past relationship and wanting to distance myself from that relationship. As Mr Poirier said, often, for many politicians, you cannot win anyway on any issue and you have to put forward what you think is the reasonable and right approach and I think that is, in fact, what will happen. You can examine the record because the wage settlements are already in. In fact there has not been a flurry of comment about it.

**Mr Carr:** Because when we talked with the Premier—

**The Chair:** Is this one final question, Mr Carr?

**Mr Carr:** We take one step forward in terms of integrity and then sometimes, when we talked about the Red Hill Creek and the Drainville situation, then we take two steps backwards and that is when my perception is the public is going to say, if the wage settlements come in too high, "Well there she goes; she worked for them." That is the difficulty we have with that, and I was just wondering what you are going to say to the public if the wage settlements come in too high. How are you going to say to the public, "No, it had nothing to do with my background"? How are you going to handle that?

**Hon Ms Lankin:** Well, first of all, your assumption is that the wage settlements may come in too high in that sort of scenario.

**Mr Carr:** I hope not.

**Mr Sorbara:** Or too low.

**Hon Ms Lankin:** I think that what is important for any Chair of Management Board and any member of government is to be able to defend their actions based on relevant criteria. With respect to wage settlements in the Ontario public sector where negotiations are under dispute resolution, binding arbitration, the legislation, the Crown Employees Collective Bargaining Act, sets out criteria by which an arbitrator will judge what a relevant or appropriate amount is and it looks at things like the economic conditions; it looks at things like settlement trends in the free collective bargaining sector. It is designed to replicate—

**Mr Carr:** But the public does not know that. They do not know all the details. They are going to say it was too high and it was your fault.

**The Chair:** Mr Carr.

**Hon Ms Lankin:** You asked me, Mr Carr, how I would respond and I think those are the things that I will respond.

**The Chair:** Mr Morrow. We have run out of time.

**Mr Sorbara:** A point of order, Mr Chairman.

**The Chair:** A point of order, Mr Sorbara.

**Mr Sorbara:** My point of order is that the Treasurer of the province of Ontario has just entered the room. We had scheduled to hear from him at 2 o'clock. He is a very busy person and I would suggest, under my point of order, that if the members of the New Democratic Party on this committee have questions for the Minister of Government Services, etc, that perhaps she could arrange to come back. I am very anxious to honour our obligation to the Treasurer.

**The Chair:** It is not a point of order, Mr Sorbara.



**Mr Sorbara:** Well, it is a good point.

**The Chair:** I appreciate the concern which you have for the workings of our government, Mr Sorbara. However, I think the government caucus has the option of asking a few questions with the forbearance of the ministers present.

**Mr Sorbara:** I just want to say to my point of order—

**The Chair:** Thank you, Mr Sorbara, we have discussed the issue, sir.

**Mr Sorbara:** We have not discussed the issue.

**The Chair:** Mr Morrow.

**Mr Morrow:** I would just like to take a brief moment to thank you for being here. I know that you have a very busy and hectic schedule, so thank you very much.

I only have one question. Do these guidelines that the Premier set down prevent you from serving your constituents as an MPP?

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**Hon Ms Lankin:** No. I think it is very important that they make the distinction that as a constituent politician you can still undertake activities to represent your constituency, but it is important that you divorce that from your position as minister. For example, I am attempting to learn how to do that in my own constituency. What I try to do if there is an issue in which a letter is to be sent that is requesting something, for example, representing someone before the Workers' Compensation Board, my constituency assistant often will sign those letters. If it is something that I am signing that is being sent out and it is a constituent matter, then I ensure that it is on letterhead. A couple of times I have had to make sure as I read something—because sometimes letters come in to Queen's Park as opposed to the constituency and I look at it and I think, "No, that is not a ministerial matter and it is inappropriate for it to be responded to from this office on this letterhead." And so I will redirect the correspondence to the constituency office.

I still can represent the members in my constituency, the residents, and that is important to me, and it just means that one has to be careful that one is not in a position of abusing the ministerial position.

**The Chair:** Mr Fletcher.

**Mr Fletcher:** Thank you, Mr Chair. I will defer my question so that we can make up some time.

**Mr Mills:** Minister, I would like just to raise one issue. This morning we had Mr Kwinter here. Mr Kwinter made a representation that would indicate—or tried to influence us that these guidelines and the rules that we are debating would somehow prohibit people of a high calibre from running for office. Now, I like—

**Mr Sorbara:** Point of order, Mr Chairman. I do not think Mr Kwinter should be misquoted like that, I really do not. I do not think he said people of a high calibre at all.

**Mr Mills:** I have it written down here, Greg.

**Mr Sorbara:** Well, okay. I would like to check Hansard, but I would be very careful when you are quoting someone.

**Mr Mills:** That is what he said, a high calibre.

**The Chair:** Your concerns are on the record, Mr Sorbara. However, it is not a point of order. Mr Mills.

**Mr Mills:** Mr Kwinter thought—I will rephrase the question. Mr Kwinter was of the opinion that the high demand of divestiture would prohibit people more qualified from running for office. I can think of a number of people that are very wealthy that have run for office, so I do not think it is a matter of content. Do you think this is going to prohibit certain segments of society from seeking political office?

**Hon Ms Lankin:** Oh, I do not think certain segments of society would be prohibited or discouraged at all. I think that—

**Mr Harnick:** Not prohibited; discouraged.

**Hon Ms Lankin:** —or discouraged. People will have to make individual choices. I was saying this earlier. There are a lot of decisions that you have to make when you decide to run for public office whether or not you expect to end up in government and in a cabinet position, and this is one of the things. It is important for people to know this up front, to have the rules clear so that they understand as they undertake those decisions to run for political office. There are many people who run, out of a sense of public duty, out of a sense of wanting to change things in society, of making a better society, of contributing in that way, and those people will make those choices irrespective of rules of divestiture.

**The Chair:** Thank you very much, Mrs Lankin.

**Hon Ms Lankin:** Thank you.

#### TREASURER OF ONTARIO

**The Chair:** I would like to call upon Floyd Laughren. As Mr Laughren is sitting down, I would remind committee members that this time around we will be starting with the Conservative caucus and proceeding clockwise. Is Mr Sorbara's objection noted? It is noted? Thank you.

Mr Laughren, we have approximately half an hour, perhaps a few minutes more, and we are eager to hear your statement first.

**Hon Mr Laughren:** I will not take up the full 30 minutes with my opening comments, but I am pleased to be here. I was surprised to get the invitation, but I guess when people saw my statement to the conflict commissioner, they could not believe it and wanted to know how I could spend 20 years in public life and not have any assets. But anyway, I am happy to explain that if you feel—Mr Sorbara might want to know how I have done that. I would be quite happy to explain that to Mr Sorbara.

First of all, I welcome the guidelines. As someone who has been in political life, public life, for almost 20 years, I guess I have had my share of comments made to me in snide ways and offhand ways about politicians and about perception of politicians. It does take its toll on one, and quite frankly, on one's family, I think, because we all are sensitive about how we feel about ourselves and our family feels about us.

I have always felt that there must be a way to correct the impression that a lot of people have about politicians, and I have known a lot of politicians go through this place

in 20 years. I think the average length of stay at Queen's Park is between five and six years. So if you add up the number that has gone through here in the 20 years I have been here, it is an enormous number and I have difficulty thinking of ones who were dishonourable. I am not talking party politics here. If you think about it that way, the number of people in political life and the very very few who cause a problem and affect the perception that the public has of us, I think it is remarkable indeed. There are other sectors out there of which I suspect that cannot be said, but certainly political life, I feel very strongly about the integrity of politicians in general and I do not think that one selects the odd bad apple and condemns the barrel.

So I feel very strongly about that, which is why I welcome guidelines that just make sure that the perception out there is strengthened, that politicians are honourable people and intend to continue, want to be. So that is why I was quite happy with the Premier's decision to proceed with these guidelines, and I do not think that the guidelines are such that they will either discourage good people from running for office or discourage people from remaining in office. I cannot imagine that they would.

I would point out, too, to committee members that there was a day, even when I got involved in politics, when a lot of people had two jobs. They tried to run a business and be a politician, they tried to run a law office and be a politician. I could not give you the statistical analysis of it, but I suspect that has diminished considerably and that now most people understand that being a provincial member is a full-time job in order to do it properly. I also have not met very many lazy politicians over the years either. It really is a full-time job, and that is reflected by the increased amount of support that members of the Legislature have now compared to a few years ago, with support staff at the constituency level and at Queen's Park. So I think that people who determine that they are going to run for office do so knowing—and I think it is important they understand this—that it is a full-time job.

It is not a very well-paid job compared to a lot of jobs that are out there. I certainly even see that in trying to hire people. If someone leaves, for example, in Treasury and you are trying to replace a senior person, the amount you pay is not what we are being paid, I will tell you that. I am talking about ordinary members of the Legislature. I am not complaining as a member of cabinet. But I know that people do not run for political office for the money. I think that is largely misunderstood out there as well, the remuneration of members of the assembly. I do not think it is rich at all.

1420

We all should understand and send the message out there to Ontario that we are bringing in guidelines that all members can have a say in. Members of this committee can have a significant influence on the final shape of the guidelines because, as you know, there is an existing act and these are simply guidelines, and also that you could not change the conflict of interest commissioner's rules simply by imposing guidelines. That would be inappropriate. If you want to change the act, that is fine. Also, the guidelines

apply to members of cabinet and parliamentary assistants because, once again, it would require a change of the act.

I look forward to the deliberations of this committee and the kind of recommendations they will make because I do not see it, at least I did not at the beginning and I do not think I do now, as a partisan issue along party lines. Not about the questioning, that is fine; I have spent my life on committees of the Legislature, I know the culture on committees and I enjoy them, quite frankly. But at the same time I do not think that the end result will be a partisan one. Why would it be? I trust that the deliberations of the committee will be serious and will be helpful because there is nothing to gain, one party over another, on this issue in my view; that it is simply: How do we put in place the guidelines that are most appropriate, that are not punitive but at the same time make sure that the perception of members of the Legislature is such that it enhances us all, it does not diminish us all? I look forward to an exchange with any of the members and look forward to your comments. Thank you, Mr Chairman.

**The Chair:** Mr Carr? Mr Harnick?

**Mr Harnick:** My impression, having been here for a very short time, is that no one really knows the conflict area better than the former Chief Justice and now conflict commissioner. Would that be something that you would agree with?

**Hon Mr Laughren:** I do not know how many experts are rolling around out there.

**Mr Harnick:** Certainly—

**Hon Mr Laughren:** He knows more than I.

**Mr Harnick:** Certainly, I would think he knows more than most of the people around here—

**Hon Mr Laughren:** I do not know, I have said I do not know how many people have made themselves experts on it—

**Mr Harnick:** No, okay, but I appreciate the—

**Hon Mr Laughren:** Mr Carr has spent the last six months burrowing himself into conflict of interest—

**Mr Harnick:** I appreciate the one thing you said, that he knows better than you do; he certainly knows a lot better than I do. What he told us in terms of the proposed guidelines, he said they are draconian. He said they will promote less people to come forward to seek public office, and that accordingly they are not productive. Whereas the disclosure provisions that are now there are working. In terms of his opinion, and the fact that he does point out that you are going to limit the number of people who will come forward to seek public office, does that not concern you?

**Hon Mr Laughren:** First of all, there is an assumption built into your question that I do not know is correct, that it is going to limit the number of people who—

**Mr Harnick:** Well, that is his opinion, and I am asking you—

**Hon Mr Laughren:** Oh, I am sorry, I thought you said that was your—



**Mr Harnick:** Oh no, that is not my opinion, that is his opinion.

**Hon Mr Laughren:** He said that, okay. Well, that is an assumption he makes, not that I make. So you had better ask him about that.

**Mr Harnick:** All right, because that opinion was also the opinion of Mr Kwinter and Mr Sweeney as well as the commissioner. Their fear is that we may end up, I suppose, having the Legislature—and I do not say this disrespectfully—of 130 people like yourself as opposed to 65 people like yourself and 65 people like Mr Sorbara.

**Mr Sorbara:** I do not know what would be worse, Floyd. I think you and I had better resign.

**Hon Mr Laughren:** Do you always use extreme examples when you are making a point?

**Mr Harnick:** I only point that out because the conflict commissioner says that the provisions we now have are doing the job, but we do not have to do or take the next step and he was quite candid when he said they are draconian and not necessary.

**Hon Mr Laughren:** Okay, but I have a funny feeling you should be questioning Mr Evans, not me.

**Mr Harnick:** We questioned him, yes. Certainly your admission that he knows more than you, I suppose you would tend to defer to him.

**Hon Mr Laughren:** I defer to his opinion. He can express whatever opinion he wants on the conflict-of-interest guidelines. That does not bother me. I am glad he expressed his views.

**Mr Harnick:** Do you have some evidence that in fact the disclosure rules are not working?

**Hon Mr Laughren:** I do not think that is the point. The point is, what we have done is bring in guidelines we think will make them even better than what they are now. It does not mean that what is there is totally inadequate or anything like that. It means that we think that new guidelines will strengthen them. I do not—

**Mr Harnick:** Why do they need strengthening if the old system works?

**Hon Mr Laughren:** Well, I guess you are getting into a matter of degrees.

**Mr Harnick:** I am just asking you, and I have asked your colleague, what evidence is there that the disclosure rules are not appropriate and are not doing the job? Something has got to be motivating you to want to have divestiture. There has got to be some facts that say that what we have is not working, we have to go further. You do not go further for the sake of going further. Are you trying to eliminate the various kinds of people who want to serve in this place? Is that what is motivating you? Or are there skeletons that you are worried are going to pop out of the closet?

**Hon Mr Laughren:** I guess I would go back to what I said right at the beginning, that I care very much about the perception of politicians being honourable and being above any sense, in the public's mind out there, that there is anything to gain at all in a pecuniary sense from being a

member of the Legislature beyond what your take-home pay is. I think it is terribly important to do what we can to strengthen that perception, and if that means that it makes some people uncomfortable because they must divest, then I think the price that they pay is worth it out there in the public mind. And I think that the public supports the idea that this is a full-time job and that people should not be running, have major enterprises or whatever, namely, that divestiture should take place if you are going to be a member of the Legislature. There is no question in my mind that that can be a sacrifice, and I say, so it is a sacrifice. I think that public life is in a sense—and I do not mean this, trying to be a martyr or anything like that, but public life is tough. If part of being tough is divestiture, so be it. I have no problem with that at all.

**Mr Harnick:** With respect, though, I cannot see how you are being logical. You come and you say—and I respect the fact that you have been here virtually longer than anyone—you have not seen anybody who has been dishonest in terms of the people you have met here, that there is a very high degree of honesty.

**Hon Mr Laughren:** But that is—

**Mr Harnick:** Now, what I am saying to you is, when you go to fix a system that is not broken, are you not perpetuating the perception the public has that politicians are not honest?

**Hon Mr Laughren:** Au contraire, I think that something does not have to be broken for us to want to strengthen it. I think you are making an assumption that because we want to strengthen it it must be broken. That is not the case. I think that we can strengthen it without implying that it is broken. I think that is all we want to do and I would say to you that the improved perception of people about politicians is very, very important, and that if that means that some people do not like the guidelines, then that is life. But I think it is terribly important that we strengthen those guidelines.

Interjections.

**Hon Mr Laughren:** Do not say "time" to me; I am not the Chair—

Interjections.

**The Chair:** Mr Fletcher, Mr Sorbara is continually reminding me of the time, but none the less, if you could limit it to one further question.

1430

**Mr Carr:** One of the things when we talked with the Premier on Monday is that he said he felt that he should be the final person to decide; that as Premier the buck stopped with him. One of the ways to take it out of the political field, because the Premier of the province regardless of political stripes will always be political, is that a suggestion has been made to make the commissioner sort of the final authority on it. That, to me, in some regards would make it non-political. You would have somebody whom we all admire and respect, like Mr Evans, as the final authority on things like basically everything as it relates to conflict—and we got into the different things such as on Dennis Drainville and on the Red Hill Creek Expressway—

and I was just wondering if you agree with that. Or do you believe the final decision rests with the Premier of the day?

**Hon Mr Laughren:** That is a good question. I do not know if I can give you an answer. I can see where there is a need for legislation that ties down the rules, but it seems to me that if the Premier wants to appoint his cabinet—and I am not playing some kind of boosterism game here—which is an arbitrary act in itself, we all know that, and the parliamentary assistants, then I think that that part of it means he is the final arbiter. But I like the idea of the legislation that lays down the broad rules. I am not trying to be evasive; that is how I feel about the arguments.

**Mr Carr:** Yes, but he does have the final say in this.

**Hon Mr Laughren:** Yes.

**Mr Carr:** The perception of the public is that, at this point in time and also during the last election, all politicians, no matter what stripe, are crooked. That is what the general perception of the public is. You can ask people and they say: "Well, you are all the same, you know. Do what you want." Given that sort of train of thought and that the object here is to remove that stigma from politicians, how do you feel if we go that one step further and we include all the MPPs under these guidelines, this divestiture problem, all of them? To my way of thinking, the parliamentary assistants are included, and Mr Sweeney sat there this morning and said he went through six. I am just wondering—

**Hon Mr Laughren:** Six?

**Mr Mills:** —six parliamentary assistants in four years. I am just wondering, in the interest of being thoroughly fair to everybody but to put everybody above reproach in the public's eye, would it not be fair, in your opinion, to have everybody under the same rules so that whatever happened to you—and we are all part of the decision-making process, I think, in one way or another.

**Hon Mr Laughren:** I do not know. I will tell you why I am hesitating. Our system of government is such that—and believe me, I do not say this because I happen to sit in cabinet—that is where lots of the decisions are made, as many of you people on the committee have told me. That is where the decisions are made and where the greatest potential for conflict is. I do not think there is any question about that. There is potential for conflict with backbenchers and with opposition members too, because I can tell you that over the years there have been times I knew things before the public knew them, just because I was so close to the government party, you see. There is no question there is potential for conflict with all members, but the greatest potential clearly is with cabinet members. I am more concerned about that aspect of it than I am the other members. That is why I said I thought that the broad guidelines should apply to all members.

I thought Mr Carr's question was a good one about—maybe you have been through it a dozen times, but this is my first time in the committee here, and I thought that was an appropriate question—who is the final arbiter. Should it be the Premier? Should it be the Conflict of Interest Commissioner? I like the idea of depoliticizing it and making it the commissioner, but at the same time I look at the cabinet aspect of it and I come down for the Premier, but that

is something I am somewhat open-minded about. I cannot give you—

**Mr Mills:** No decision.

**Hon Mr Laughren:** Yes.

**Mr Fletcher:** I am going to follow along the same lines as Mr Mills. During the election I was hearing a lot of people say: "You're all the same. Politicians are all the same." And I know that a lot of that stems from what has been going on in Ottawa with the federal Conservative Party and the fiascos it has been having, and also some of what did go on in the past Liberal government, provincially.

I am just wondering: Are these guidelines going to make the public perception any better? Are people going to say, "Now that you're really wide open, you're honest people"? I do not know if that will happen.

**Hon Mr Laughren:** Mr Fletcher, I cannot answer that question. I do not know whether or not this will have any bearing on the collective impression of politicians or not. By itself, I guess we will be judged more by our behaviour than by the rules that guide us. But, in the end, I think that it is important to send out that signal that there are guidelines that do give us direction. I would rather err on that side than on the other side. You are asking me if this will alter public opinion. I do not know by how much, but I can tell you that I sure would not want to go back to the old days when there were no guidelines. It seems to me that we need conflict-of-interest guidelines, we need the commissioner, and for cabinet I think we need these kinds of guidelines.

**Mr Fletcher:** Okay.

**Hon Mr Laughren:** Just before you go on, Mr Chair: I am not trying to be difficult but I thought I was going to be on at 2, and I have an appointment at 2:45. I thought 15 minutes was a leeway there so I would appreciate—

**The Chair:** I think you are quite right, sir. In deference to the Treasurer, if we could—

**Hon Mr Laughren:** It is in the buildings so I—

**The Chair:** Mr Laughren, could we perhaps have five minutes?

**Hon Mr Laughren:** Oh, yes. I can stay right till a quarter to because it is in the buildings.

**Mr Sorbara:** My first question really arises from a question that Mr Harnick would have asked, and the Treasurer is a very good person to answer this question because he has been here a long time.

**Interjection:** He looks it.

**Mr Sorbara:** But he looks good. It looks good on him.

**Interjection:** He was not grey when he came?

**Hon Mr Laughren:** I was not grey on 1 October.

**Mr Sorbara:** You were a lot taller too.

This is not meant to be facetious although there is politics in everything we do, just like that open letter you published during the campaign. It was brilliant—remember? You said, "This is going to win us the election, Greg," and we had a wonderful chat and you were right. But that letter did not win it.



Is it not true, Treasurer, that what reduces people's confidence in politicians is not the personal gain that politicians are making in this work? You have been here 20 years, but I say to the Treasurer of the new government, making very specific promises during an election campaign and then getting elected and saying, "We're not doing it," is that not really what it is all about? Does that not reduce the integrity that we all carry? It does not matter what you say; when you are in power you will do whatever the hell is necessary to stay in power and run a good government. I agree with the changes in policy that you are making, but it does qualify the stature that we all have in the province.

**Hon Mr Laughren:** It does not help—

**Mr Sorbara:** It does not help.

**Hon Mr Laughren:** —but it is like everything else, I guess. It is a mix of things that have caused the perception that is out there. For example—and I am not trying once again—

**Mr Sorbara:** No. You have very little time.

**Hon Mr Laughren:** No. I am like you, Mr Sorbara. I do not want to be unduly political, but in the last three years—I almost said four, but it was not a four-year term, was it? It was three years—some things happened that also caused a problem about the perception—and I am not trying to dredge them up—of politicians and particularly government politicians, government members. That would be true regardless of which party was in power—

1440

**Mr Sorbara:** Regardless of whether or not the ministers had divested of their interests.

**Hon Mr Laughren:** That is a separate issue from divestiture. Absolutely.

**Mr Sorbara:** But with respect, we all agree on this committee, I think, that disclosure has been a very effective tool, and then if we can find ways of enhancing disclosure, that is good. But what the Premier has asked us to do is consider a new guideline that says, "If you're invited to sit in the cabinet, you will have 60 days or so to sell your private or your business interests."

What I want to ask the Treasurer is this: Why does a scoundrel who is willing to abuse his oath of office and his office become less of a scoundrel because he has sold his or her business interest and converted that into cash? Does that make an individual who is a scoundrel, and who would violate a public oath and a public trust, into someone who is not a scoundrel? I fail to see it. I fail to see how we are adding any value to what we are doing here. If the Treasurer could explain that, then I would be happier.

**Hon Mr Laughren:** I will do what I can to make you happier.

**Mr Sorbara:** Okay, and then I have just one more little question.

Interjection.

**Mr Sorbara:** I am sorry, then Jean has one more question.

**Hon Mr Laughren:** First of all, as you imply, a scoundrel is a scoundrel whether he or she has assets or not. But I think that there would be less opportunity for conflict without the assets. That is what I believe.

**Mr Sorbara:** Or more, maybe.

**Hon Mr Laughren:** I do not think so.

I think that in that sense it is a positive move. I stress a lot about perception, but I think it would be wrong to say that we are only dealing with perceptions here. We are not just dealing with perceptions. For example, divesting of something is not a perception.

**Mr Sorbara:** No, it is very real, very expensive.

**Hon Mr Laughren:** It is very real. It is very costly. That is correct. That is why built into the guidelines is that proviso on undue hardship that is there as well.

**Mr Sorbara:** And who makes that decision in respect of the Premier and what he has to divest?

**Hon Mr Laughren:** The Premier.

**Mr Sorbara:** He is his own judge.

**Mr Poirier:** Very quickly, Mr Treasurer: I appreciate what you said as an introduction. I know you have been here a long time and we have had many private chats and interesting chats and I know that what you are saying about politicians generally is quite true and I have seen it here myself. Do you not think that what you are doing with these guidelines is a bit, pardon the expression, caving in? You and I think that the perception that most of the public has out there of politicians is erroneous? It is not correct. It is not what you have seen and what I have seen. Maybe the correction to this is for us to even tell the truth about what we really are and are not to the public, as opposed to seemingly caving in; and even giving back to the Premier, where people may see the Premier in a very difficult light, in a very tough light also—and if that person then now makes decisions as to what is or what is not a conflict, that may add to the problem also. Do you not see that?

**Hon Mr Laughren:** No, I really do not. I am not trying to be obtuse. It seems to me nothing could be crisper—I was going to say "cleaner" and I did not mean it in a pejorative sense—or cleaner than divesting so that you come to the cabinet table with no conceivable conflict, either perceived or otherwise.

Mr Sorbara made the point, I think he was hinting that cash gives you a certain amount of—

**Mr Sorbara:** Clout. Freedom.

**Hon Mr Laughren:** —comfort or freedom or potential for conflict as well, and I appreciate that.

**Mr Sorbara:** Wrap yourself in a white gown and say, "Listen, I'm absolutely clean."

**Hon Mr Laughren:** Yes. I understand that, but I think—

**Hon Mr Wildman:** I think absolute poverty has the same effect.

**Hon Mr Laughren:** Yes, vows of poverty would be—I know. Anyway, I think that as a package of guidelines the component that makes these guidelines different and strong, in a very real sense, and also in the minds of the

public as they get to know this—I do not think a lot of people know about these guidelines at this point—I think that is the aspect of divestiture. I think that is the one aspect of these guidelines that is the strongest and sends the signal that this is a different set of guidelines.

**Mr Sorbara:** No doubt about that. We agree on that.

**The Chair:** Thank you very much, Mr Laughren.

**Hon Mr Laughren:** Thank you very much.

#### MINISTER OF NATURAL RESOURCES

**The Chair:** Mr Wildman, please. I understand that you are no stranger to these proceedings and I need not give you plentiful instructions. I do apologize for the delay in the proceedings, but I am sure you know these things happen.

**Hon Mr Wildman:** I do have another appointment at 3, but I can stay until 3:15. That will make me late so I cannot stay beyond that.

I thank the committee for the opportunity to appear here today to deal with a very serious and complex issue. I have heard a little of the discussion because I came in thinking I was going to be on time at 2:30 and I heard the discussion of the previous witness, the Treasurer. I guess, in a way, I will be saying some of the things that you have heard at least from him if not from others.

I want to say a couple of things, first about politicians and the role that we play, the responsibilities we have, and what my experience in 15 going on 16 years around this place has taught me, if I have learned anything. I have learned that most politicians, almost all politicians that I have known, no matter what political party, are honest, hard-working people who are here to do the best they can for their constituents and to help shape the programs and policies of government for the best interests of the people of the province.

Obviously we have all had disagreements as to what the best ways are to achieve the benefits that we all want for the people of Ontario. But in most cases, and almost all cases that I am aware of in my experience in this Legislature, those have been honest disagreements.

I have felt it a privilege to serve as a member of the assembly and to serve the people of Algoma in this place over the years, and I certainly in no way denigrate the responsibility of the ordinary member, whether that member be a member of the party that supports the government or a member of one of the opposition parties. I respect very much the role of the opposition. After all, I served there for 15 years.

I think that most people feel the same way about their own members. It is a rather strange situation we seem to have when talking about perception. In my experience at least, most people think that the persons they have running in elections in their own constituencies are good people. But somehow, when they look at the group of politicians in general, they think, "Well, they're not a very trustworthy bunch," which is kind of a contradiction. I do not know exactly the reason for it, but it is there. I suppose it is the same as the mechanic who you trust will look after servicing your automobile, but in general you think most mechanics

perhaps are not as deserving of trust as the one whom you go to to have your car dealt with. I do not know the reason for that, but in my experience most politicians are genuinely hard-working and honest people.

I heard some discussion earlier as I was listening to the debate about whether or not the guidelines or any guidelines will change scoundrels. I have already said that, in general and in most cases, I do not think scoundrels get elected, because I do not think the electorate is stupid. In an election in a democracy, we have to trust the wisdom of the voter. Sometimes when you are serving in opposition, as I did for so long, you wonder how they could be wise and not vote for your party, but in fact you—

**Mr Poirier:** They are not stupid; they are just unwise.

1450

**Hon Mr Wildman:** On the other hand, I do think genuinely people can see through falsity and prevarication.

One would have to be a very good actor, or bad actor I suppose, in order to be able to fool the voters, for any extended period of time at least. I have always lived by the motto myself that if you tell the truth you do not have to have a good memory, and since I do not have a particularly good memory I have always tried to be honest with the people that I serve here and with the people that I serve with from all sides of the House.

The perception is something that we have to deal with, and I think all premiers, in the experience I have had here, have tried to deal with it one way or another. We have had the guidelines under Bill Davis when I was first elected, which were rather strict guidelines. Then we had the guidelines as set out by Premier Peterson when he was the Premier of the province, which changed the guidelines that had governed members of the House and members of the cabinet somewhat, particularly in terms of members of the cabinet. There were some problems, I recognize, with both sets of guidelines: those set out by Mr Davis, which were rather strict, and the ones that I might suggest were not as strict under Mr Peterson.

I am not going to refer to any cases that occurred in the last mandate at all, other than to say—and my friend Mr Poirier will remember this—that when there was a problem, I expressed in the House my concern for the minister involved, and it was genuine concern for what he was going through.

So the Premier-elect, after 6 September, had to deal with how he would respond to this perception and what kinds of rules he would set. I think that Bob Rae went through a lot of consultation with his own colleagues and with people in academia and elsewhere to ask them for advice. I think he is also looking for advice from the committee as to how we can best deal with perception, to ensure that not only are politicians honest but they are seen to be honest and they demonstrate that they do not have conflicts when making decisions. He came down on the side, for cabinet ministers, of saying that cabinet ministers should divest of assets so that there could be no question of conflict in terms of one's personal investments or assets.

That is very strict. There is no question. I must say that in my own personal economic situation I have not had a lot



of trouble with it because I did not have a lot of assets, but I can certainly understand where perhaps it would be more strict for others. But we all make choices when we choose what we do in life. All of us here, particularly those who like myself are out-of-town members, have made choices with regard to our family lives, to our careers. When I was first elected, I, as many others I am sure, was making more money outside of this place than I was when I came here, and I made a choice. I saw this as a tremendous opportunity to serve the people of Algoma and to serve the people of Ontario, and so for me at that point the economics of it was not the most important issue. I admit it was not a major drop in income, but it was a slight one.

But I think the major choice that I had to make in regard to coming here and serving here was what it has done to my family life. Having served here for almost 16 years, I will say quite bluntly that my two eldest sons largely grew up without me, and that my wife has really, even though she is not a single parent, had to serve almost as if she were. That is a very difficult choice, and in my view a more difficult choice than choosing to divest oneself of assets. I made it, and I will admit on occasion I have regretted it, but in most cases I have not. I have found the experience here tremendously rewarding. I have been able to do a lot, I think, for the people of Algoma and for the people of this province in opposition. I hope to be able to do more in government. I have developed a lot of friendships throughout the province and within this assembly, with members both sitting here now and who have served in the past, that I would never have had the opportunity to have developed if I had not made those choices.

But I am just saying we all make choices. I think the Premier has given members of the cabinet particularly a difficult choice to make. They are not forced to make it. If they choose to serve if offered the opportunity then it is a choice they have to weigh, and if they believe that the opportunity is as important a one as I do, they will accept the guidelines and live with them.

I am open to questions.

**Mr Poirier:** Bud, we have had a number of our colleagues, past and present, Liberals, NDP, come forward and we have all agreed on what you have seen—Floyd for 20 years, you for 16, Sweeney for 15, Monte for five, myself for seven—members actually be, compared to the perception. There is a huge Grand Canyon of difference, right?

**Hon Mr Wildman:** Yes, except that, Jean, I would say in response that unfortunately—and I would say parenthetically that it is more in Ottawa, I suspect, than here—there are a few examples that have—

**Mr Poirier:** Coloured the rest of us.

**Hon Mr Wildman:** Coloured the rest, and have, in the public's mind, proved in their view that if given the chance or the opportunity, most politicians will take advantage of their position. While I agree with you that in the vast majority of cases that is not accurate, there are enough examples that the perception is there, and I suppose in order to deal with that, you have to ensure that not only are people honest, as I said earlier, but that they are seen not to have the opportunity to be dishonest.

**Mr Poirier:** But is that not just the case where, when you look at it, Bud, if you tighten the knot—I could put myself in the shoes of Mr and Mrs Ontario on the outside, looking: “What are you guys doing? You’re tightening the knot. You’re making it more difficult. Why? Are you confirming what I had suspected all along, that there were loopholes and that you guys were benefiting and profiting from the loose laws or the former loose guidelines?” It is almost like telling them that there was a problem with the integrity of the members, no matter who they were and which party they belonged to, and that you guys are tightening up, and it is almost admitting that there was a major problem with us at Queen’s Park.

I do not want to be compared to Ottawa or anywhere else, because the laws of what you want to do, or not do or what we did or did not do, applied only to Queen’s Park, whereas maybe the solution was to go out there and tell the people what we really are and are not as opposed to making it tighter. Like you, I do not have a damn wealth. I do not have anything. I would roll on the floor laughing if I was asked, “Would you have to divest?” I would say, “What the hell for?” My cat has already been neutered. There is nothing. So I have nothing personally to lose about that.

**Hon Mr Wildman:** I understand the point you are making, Jean, but I think in a sense, if we are confirming anything, we may be confirming and reacting to the perception.

**Mr Poirier:** Exactly.

**Hon Mr Wildman:** I do not think that that necessarily says that we believe that the majority of politicians have been the type in the past that would take advantage of a situation. But it is admitting that there have been cases in the past, not necessarily at Queen’s Park but generally, politically, people who have taken advantage or attempted to take advantage, or have in some cases not taken advantage but have put themselves in a situation where they might have been able to, and people have raised questions about what they are doing and why they are doing it. So if we are dealing with perception we may be reacting to that perception and saying to the people who voted on 6 September—you may disagree with me, but I think the vote on 6 September did not just have to do with Ontario politics. I think it had to do with politics in this country.

1500

**Mr Poirier:** Quite true.

**Hon Mr Wildman:** There was a certain angst out there among voters and voters were fed up for a lot of reasons, one of which may have been their perception of politicians in general. But there were other reasons as well, they were looking for change and that was one of the things the Premier, I think, had to take into account in coming up with a new set of guidelines and rules where he said, “People are looking for change and how do we respond to that?” We respond to it by showing that indeed we want to change; we want to reform the system; we want to ensure that no one who takes a position of responsibility such as a cabinet post can be in a situation where he or she may have the opportunity to take advantage for personal gain. He made that choice, and I support him in

the choice he made because I think that by passing the guidelines, accepting these guidelines and rules, we will be saying to the public, "Whatever your perception, we as a group of people who have been elected to serve the people of this province are prepared to live by these onerous and strict guidelines and to accept the rules as they are laid out." Maybe in doing that we will help to change the perception.

**Mr Poirier:** Do you think so?

**Hon Mr Wildman:** I hope. I cannot predict; I hope.

**Mr Poirier:** I bet you anything—one last 30-second statement—I bet you it does not change a darn bit, unfortunately.

**Hon Mr Wildman:** I learned a long time ago, Jean, never to bet with you. I remember.

**Mr Carr:** We had three cabinet ministers come before us, all of whom this legislation probably will not effect because they all said they did not have too many assets and not too much to get rid of. The question I have got—

**Hon Mr Wildman:** That is not for trying.

**Mr Carr:** Yes, that is—

**Hon Mr Wildman:** It is just what happens to you after you serve around here for 16 years.

**Mr Carr:** Yes, you work so hard in politics. The question I have is if there is anybody in cabinet you are aware of who is going to be hurt by it, because what I guess I am getting at is that we are putting something in place, looking at maybe this particular cabinet and saying we are going to do this because of public perception, but we are not looking necessarily for some of those who might be hurt. In other words, we are putting legislation in, and I just wonder what your perception is, whether anybody else is going to be affected by this at all.

**Hon Mr Wildman:** I am not privy to the reports that cabinet ministers have made to the Conflict of Interest Commissioner and to the Premier so I cannot speculate on who might or might not have to divest significant assets. I suspect that there are people, but I do not know, because I am not privy to that information. The Premier is and I understand from reports in the press that there have been a couple of members, not cabinet ministers—

**Mr Carr:** Parliamentary assistants.

**Hon Mr Wildman:** Parliamentary assistants who—

**Mr Carr:** They have got all the money.

**Hon Mr Wildman:** —who the Premier has indicated must move to divest, but I do not know anything more than what I have seen in the press.

**Mr Carr:** Going on those lines, the question I asked the Treasurer before, too, is: On the one hand we want to make things very tough, but on the other hand we say the final judgement rests on somebody who is very political, and I think you were here probably when I asked the question.

**Hon Mr Wildman:** Yes, I was.

**Mr Carr:** I wonder what your thoughts are towards that, if we are really going to say, "Let's take the politics out of it." I can understand where the Premier says, "The buck stops here and I'm the final authority," and we have all heard great testimony towards our present

commissioner's past career as a justice and if we are really going to say, "Let's take the politics out of it," then do you not feel that it would be best to throw it into his court and say, "Okay, here is a man who is going to make judgements based not on political considerations, but like he did when he was a lawyer, on the law"? Can we not increase the perception if we do that? Would that not really take us a step further? I wonder what your thoughts are on that.

**Hon Mr Wildman:** I have a tremendous amount of respect for the Conflict of Interest Commissioner. I have dealt with him since he was first appointed, as other members have, and he has always seemed to me to be very fair and willing to work with the members, to assist the members to ensure that they are complying with the regulations and the guidelines. I understand the motive of your question, but I must say that in my experience around this place I do not think we ever can take the politics out of anything, and I do not think that we ever should. I do not make any apologies for being a politician and practising politics, and I do not think any of us here do, and I do not think we should apologize to the public for that.

In the previous mandate during the Liberal government, the argument was made a number of times by the government at that time that these decisions should indeed not be resting with the Premier, but that they should be with an independent arbiter who is not a politician and not involved in politics. I understand that argument and I certainly would not be averse to suggesting that a person such as Judge Evans should perhaps give advice, but the ultimate decision on who should or should not serve in the cabinet, in the executive council, must rest with the Premier, not just on the basis of conflict of interest or conflict-of-interest guidelines, but on the basis of a host of other considerations.

The ultimate decision on whether or not a person is fit to serve as a member of the executive council is a political decision and it must rest with the Premier. I understand that the Premier, as I said earlier, has asked for the advice of this committee and I would be interested in what the committee determines in this regard, but personally I think that while the advice of a commissioner like Judge Evans is probably very helpful—I would certainly, if I were in the position, value it—the ultimate decision I think has to rest with the political person in charge.

**Mr Harnick:** Just very briefly, I remember you said you are not going to fool the voters, and I agree with you, a politician is not going to fool the voters.

**Hon Mr Wildman:** Might for a short time.

**Mr Harnick:** Beyond that, but for any length of time, I agree with you. If we keep that in mind, you have a situation where on the one hand you are doing something to create a perception or change a perception that the public has that you yourself have said is not a true perception and we also know that the voters are not going to be fooled for any length of time anyway. On the other hand, you have got the privacy commissioner saying that the conflict-of-interest guidelines are draconian, and I think the major reason he said that is because it will limit the number of diverse individuals who will come forward to serve in public office.



**The Chair:** Mr Harnick, I believe you mean the conflict of interest—

**Mr Harnick:** The conflict of interest—I am sorry, yes. If we try to strike a balance between public perception which you yourself say is wrong and with the fact that—and I agree with you—you say that you are not going to fool the voters for any length of time, to strike a balance and have guidelines that are going to limit the number of individuals who will come forward, there does not seem to be any logical balance in those two positions.

**Hon Mr Wildman:** Okay, If I could respond. First, you will recall that I said that I believe you could not fool the voters about a person's real motives for any significant length of time. At the same time there is a contradiction out there that I do not understand, where people tend to view the people who run in their own constituencies and get elected and serve them as good hardworking people on the one hand, but do not view the group to which they belong in the same manner, and I do not understand that. There is no logic in that so perhaps there is no logic in politics. I will say that it is my perception that politicians are honest and hardworking. I hope it is not a wrong one. But politics, as Davis used to say, is perception. It is one of the few things I agreed with Bill Davis about, and he used to say it often, that in terms of the end results in politics it is less important what is actual than what is perceived to be, and that is why I think we have to respond to the perception.

1510

Now you said about the comments of the commissioner that he believed the rules were draconian. Well, as an historian, I remember where the word "draconian" came from. It came from Drakon, a great Greek lawgiver who had very strict rules and perhaps the time is for strict rules.

**Mr Harnick:** The only thing is, the one thing you have not addressed—

**The Chair:** Just one further question.

**Mr Harnick:** Yes. The only thing that you have not addressed is this idea—and you have been here 15 years. I respect your experience over that period of time. Can you, in looking back at people who have served on the executive council, say that, "Gee, a few of those good people may not have served if they had to divest of everything"?

**Hon Mr Wildman:** I do not know that because, as I said, each person has to make his or her own decision. I do know that there were individuals who served as members of the executive council in Liberal and Conservative governments who I understand, I do not know for certain, had some significant assets. They would, under these rules, have had to make a choice, just as we all make choices, about whether they were prepared to make a sacrifice in order to serve or not. I think we all make sacrifices of one

sort or another and I do not know how they would have decided. They would have had to decide.

**Mr Harnick:** In your experience, did the fact that they did not divest themselves—

**The Chair:** Thank you very much, Mr Wildman.

**Hon Mr Wildman:** You want to get rid of me, do you?

**The Chair:** No, I do not, sir, but we have a couple of points that—

**Mr Harnick:** Would you mind answering one more question?

**Hon Mr Wildman:** No. I will answer one question, if it is all right, Mr Chair.

**Mr Harnick:** In your experience over the period of 15 years that you were in the opposition and had an opportunity to watch cabinet ministers of various governments, did you ever get the impression that they were not doing their jobs properly because they had not divested of their assets? Did that affect their performance or were the disclosure rules adequate in terms of their performance?

**Hon Mr Wildman:** I want to be very careful about how I answer this, because this is a very important question. I will say this: I know of cabinet ministers who have served in both Conservative and Liberal governments who are good friends of mine, personal friends, who I believe to be very honest people, whose performance on occasion during their careers was harmed because of a perception of either conflict or the possibility of conflict. I do not believe that would have happened if these rules had been in effect.

**Mr Harnick:** But they never were able to—

**The Chair:** Thank you very much, Mr Wildman. The clerk has an announcement. I would also like to point out to the committee the agenda for next week as it has been circulated and also the final summary of recommendations that our research has prepared. Clerk.

**Clerk of the Committee:** Okay, I just wanted to mention that I hope to have delivered to everybody's office tomorrow or Monday morning at the latest, the final group of amendments for Bill 17. There are still some government amendments that I do not have and I do not have any opposition amendments, so as soon as I have those I will then distribute them to people's offices, hopefully before clause-by-clause commences.

**The Chair:** I believe Mrs Cunningham had some amendments. Do you know if they will be ready?

**Mr Harnick:** Yes, Dianne is meeting as we speak now and I will try to catch up with her and get our amendments.

**The Chair:** Thank you. I guess at the moment we are adjourned until—no further business? We are adjourned until 1 o'clock on Monday. Thank you.

The committee adjourned at 1515.

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## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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Première session, 35<sup>e</sup> législature

## Official Report of Debates (Hansard)

Monday 25 February 1991

## Journal des débats (Hansard)

Le lundi 25 février 1991

### Standing committee on administration of justice

Child and Family Support  
Statute Law Amendment Act, 1990

### Comité permanent de l'administration de la justice

Loi de 1990 modifiant les lois  
relatives aux obligations  
alimentaires

Chair: Drummond White  
Clerk: Lisa Freedman

Président : Drummond White  
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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday 25 February 1991

The committee met at 1320 in committee room 2.

### CHILD AND FAMILY SUPPORT STATUTE LAW AMENDMENT ACT, 1990

### LOI DE 1990 MODIFIANT LES LOIS RELATIVES AUX OBLIGATIONS ALIMENTAIRES

Resuming consideration of Bill 17, An Act to amend the Law related to the Enforcement of Support and Custody Orders.

Reprise de l'étude du projet de loi 17, Loi portant modification des lois relatives à l'exécution d'ordonnances alimentaires et de garde d'enfants.

**The Chair:** Today we are considering Bill 17, An Act to amend the Law related to the Enforcement of Support and Custody Orders. Are there any comments, questions or amendments, and if so, to which sections of the bill?

**Mr Wessenger:** The government will be introducing a series of amendments to the bill, which I understand have already been circulated to all members of the committee.

**Mr Sorbara:** Our party also has a number of amendments to put before the committee. They have been presented to the clerk of the committee and have been incorporated into the package of amendments, and with any luck at all some of them will get passed, I hope.

**Mr Elston:** While we are awaiting the official response from the third party to the opening request—

**The Chair:** We are awaiting the third party response.

**Mr Elston:** —could I just ask one question? One of our amendments will deal precisely with the issue of child poverty, and I believe it is the position of the Attorney General, his assistant being in the chair now, that this in fact is a child poverty bill, an issue which is designed to take steps to fight child poverty. Is that still the position of the ministry?

**The Chair:** Are you wishing to make a statement about the bill or—

**Mr Elston:** No, just asking if they would confirm the position of the government that this is a fight against child poverty.

**Mr Wessenger:** I think, Mr Elston, that this act has many purposes and that is one of them.

**Mr Elston:** Would you describe it as chief among the purposes?

**Mr Wessenger:** The main purpose of the act is obviously to provide more support for children and families and that is the main purpose of—

**Mr Elston:** That seems like a reasonable response, exactly the one I wished.

**Mrs Cunningham:** The comments that we would have follow what has already been stated: If in fact the purpose of the act is to put more support and resources into

the hands of the parents who rightfully need them for their children, I would think at the same time that we do it keeping in mind that we do not want to increase the bureaucracy of having to do it. We want it more efficient for the families, but there will be some amendments that we will put forth to make certain that there is as little intervention as possible and that we are not wasting our time going after people who are rightfully supporting their families now the way they should be. So that will be the essence of where we are coming from. We want to help the government in this province in its endeavours, but we are not here to create more big bureaucracy and divert dollars away from families.

**The Chair:** Shall section 1 carry or are there amendments?

**Mr Wessenger:** I have an amendment which requires the unanimous consent of all—

**Mr Sorbara:** On a point of order, Mr Chairman, before my good friend Mr Wessenger introduces an amendment that needs unanimous consent, it has generally been the case, as I understand it, when a committee of the Legislature is considering a bill of this magnitude with as many amendments as we are going to be seeing on this bill, that we begin consideration of clause-by-clause review of a bill like Bill 17 with a statement or a speech or some remarks from the government, summing up the purpose of the bill, the government's view of what was heard during our public hearings and a summary, at least, of what is going to be in the amendments. I know that you are just a few months in the chair here and you are doing a very commendable job, an excellent job I might say, but I would point out to you that, generally after a speech of that sort, it is customary and appropriate to give the two opposition parties, if there are two opposition parties participating in the discussions, an opportunity to respond to the remarks of either the Attorney General or his representative the parliamentary assistant, who in this case is my good friend Mr Wessenger.

My point of order is really a question, and that is: Are we going to hear from the parliamentary assistant of the Attorney General in regard to the government's view of what was heard during the public hearings, a review of the bill and certainly an analysis of the amendments coming forward, or are we just going to move into clause-by-clause?

**The Chair:** I would welcome comments from the parliamentary assistant if he wishes to put them forth.

**Mr Wessenger:** I think that what I would suggest in the circumstances, in view of the fact that I think that we have already discussed many of the proposed amendments in general terms and we have heard from the representatives, and in fact some of the proposed amendments will



deal with some of the matters raised by the groups, I would propose really, from the government's point of view, to dispense with opening remarks in the interests of giving us more time to deal with the clause-by-clause sections of the bill.

**The Chair:** Mr Sorbara, would you like to make any comments?

**Mr Sorbara:** I do have a few comments to make, but might I ask that the part of our opening comments be presented by my colleague Mr Elston, who will only be with us for a few more minutes and then needs to participate in other deliberations of the Legislature? Then I will carry on from where he leaves off.

**The Chair:** I believe his meeting is not for another 20 minutes. Are you anticipating the comments requiring that much time for his opening part of them?

**Mrs Cunningham:** Do we have a choice of who makes them?

**Mr Sorbara:** Mr Poirier is not ready to make them.

**The Chair:** It would be helpful to have a sense of the length of time involved here.

**Mr Sorbara:** Do you want minutes, hours or days?

**Mr Elston:** While I appreciate your invitation to do a 20-minute presentation, I am not prepared to do that. I just wanted to highlight a few of the things that I found as we went through the public hearings with respect to the bill. I note for the record that of course we had some interesting presentations made, and while each of the parties had supported the general intent of the legislation, it became clear during the public presentations that there were a number of individuals who had some concerns, in fact real reservations, about the merit of proceeding with the legislation in its current form. In fact during questioning of some of the witnesses and even during questioning of some of the representatives of both the ministry and of the New Democratic government we found some places where there were some difficulties inherent in the way that the bill was structured. In that light, we have put together a series of amendments around which we think there is some opportunity for making the bill a little bit more reasonable, probably even a little bit more workable, and which in some ways will define and delineate a little bit better where the responsibilities and onuses are going to rest.

I found during the deliberations that a good number of advocacy groups came in and actually echoed the call of the government that this was an attack on child poverty. When you got down to the result of the submissions they inherently supported an extra series of amendments, if we could have put them in this bill, that would have gone much further to encourage advance payment systems by the government to deal with poverty and to assist people in extremis in terms of financial matters.

1330

What we have done in the amendments we have brought forward is to set up a couple of things that I thought were unclear, and my colleagues have agreed with me, that in fact there is a duty of responsibility owed by the support and custody order enforcement branch and its

officials not only just to the payee but also to the payor. I guess if those amendments actually carry—and I presume that those amendments will carry, although there is some controversy about how far the amendment is to go throughout the bill—we want it made clear that both payor and payee are owed a responsibility by the bureaucracy. Of course that is in fact quite what it should be because there are moneys passing from one to the other, trustees, relationships set up between payor, payee and the government now, in every case where there is a breakdown.

I also wanted to make it clear that if this was a genuine attack on child poverty we should not speak so much about an attack on child poverty unless we were willing to move forward and indicate that the director had the discretion—and one of our amendments goes to this extent—to refuse to honour an assignment until such time as money had been paid in large enough quantity to the payee and her dependants, or his dependants, as the situation may be, that they reach at least the poverty line. If this bill is to do anything about child poverty, as a number of groups urge us to do, it would not require any expenditure of money at all. We could allow them to receive the payments from family benefits or general welfare assistance plus the private source of funds so that they could actually be better off, rather than having the director going ahead and making the private payments available to the consolidated revenue fund. That is problematic if the purpose of the bill, about which the parliamentary assistant was so kind as to speak at the opening of these exercises today, is to be carried out.

There are a whole series of other issues that have some very practical questions behind them. Our amendments are designed to bring those issues to the fore so that we can deliberate upon them one at a time. We also have, by the way, some of the same concerns that I know are going to be exhibited by a number of the government members on this committee. Some of us have talked, if not at length, at least intensely, about some of the issues generated by some of the proposed amendments that we have had before us for some time.

Having the opportunity to listen to all of the people make presentations, it was quite clear that the bill was widely supported, that the parties here do support it, but that all of us have very real concerns about the practical nature of its application if two or three things fail to occur.

1. If there is a failure to provide real and broad-based financial support to this organization, this whole regime is bound to fail. I think that becomes clear. We have a very big backlog now under a system that does not require the inclusion of every agreement in it.

2. It seems to me that this is also bound to fail if we provide a very inflexible collection-agency-type model that does nothing but take cheques and is unable to respond to the real and legitimate concerns for fairness and for flexibility that individuals in the community need. That is particularly the case when you consider that a whole number of people, even if it is 20%, are not in default in payments, who are voluntarily making their payments now. I think that is the minimum number we could agree upon. We are now introducing a third party into a relationship between

two people which has already broken down—necessarily, because it will have to result in that before we get collections and other things required. We are introducing a third party into a relationship that is already strained, which it seems to me, develops a new tension in a relationship between payor and payee and their dependants. This legislation is bound to fail socially if we mandate this collection agency with such an inflexibility that it is unable to respond to the real social and emotional needs of the people who are party to these actions.

I am very much concerned by that. We had a group of people in here, I guess it was on the second-last and the last day, who made presentations about the difficulty of assuming some sort of normal relationship, particularly with their children, but even with their former spouses. We already know that the relationship is marked by emotions of anger and hostility, but when we introduce this third player it will become much more impossible. I think that makes it particularly more difficult to say that this piece of legislation is socially responsible. If it is not flexible enough to take into account the human emotional needs of the parties, then of course this legislation will fail. It may be a good collection agency bill, but it will be bad social legislation.

3. The third part I think that we will see is that if we do not provide for the individuals—and I have talked about the social and emotional side of it—who are party to these breakdowns, an avenue for the development of a sense of responsibility for their own affairs, I would say that we are failing again on the social side of the legislation. If it would appear that every time there is a problem between two people they can either run to the courts, as they now do, where it is extremely expensive—and that is something else I would like to underscore in my remarks, the expense of the court system—or if they resort to the director to verify the right of the so-called aggrieved party, then this legislation will fail.

Right now there is provision in the bill, obviously, which says that for separation agreements or for court orders before 1987 they can be registered at the discretion of the director and upon a call or request by one of the parties, they can become subject to a support deduction order. It seems to me that that is an invitation for visitation of emotion by one party resorting to the bureaucracy of the government of Ontario. I find that that, as a result of this bill, would be a failure again from a social legislation perspective.

While I outline these as major concerns, I am not sure that any or all of the amendments will answer those questions sufficiently, except to say that as we go through clause-by-clause—and I regret that I am not here for each of the clauses, but we are interviewing, with Ms Murdock, the candidates for Freedom of Information Commissioner. I thought I would tell you what we are doing since it is freedom of information we are dealing with. But we will be in and out of this committee, and I only wish that I was here for each of the clauses so that I could ensure to the best degree possible that we build into this legislation the type of flexibility that is necessary, because we are dealing

first and foremost with human beings, with individuals who have emotional as well as financial needs.

I just wanted to underscore those three areas of concern for you, Mr Chair, and I have taken up just a few minutes more than I planned, but I thought I would give you the context of the concerns that we have as a caucus.

One last item: I guess if I looked at the amendments we have put in, some deal with very practical matters like assigning interest to amounts that are received, and how you credit those, and a number of other very nitty-gritty items that might very well be the subject matter of regulations. But that brings you, Mr Chair, up to date on exactly where we have come as a caucus. I know Mr Sorbara has some more remarks, but those are mine.

**The Chair:** Thank you very much, Mr Elston. I am very pleased that you take the time out to sit with the committee this week, knowing your very busy schedule.

**Mr Sorbara:** I do not propose to go on at great length in my opening remarks, but I do just want to expand on some of the things said by my colleague Mr Elston and make a few of my own remarks.

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I think I, like the other members of the committee, was very impressed and in some cases very touched and in some cases very moved by the presentations that we as a committee heard from members of the public during our several days of public hearings.

I am wondering whether any of what we heard had any affect on the government. I have not had an opportunity to review the government's amendments. I would have thought that the Attorney General, or the Attorney General's parliamentary assistant, would have come before the committee today to prepare this committee for the work it is going to undertake.

When I say this, I am not simply trying to put the government or the Ministry of the Attorney General in an embarrassing position, but if you look at the documentation that we have, the annotated version of Bill 17, you can see that we are going to be undertaking a significant amount of work in dealing with this bill clause by clause.

I do not know if the amendments that the government are proposing bear any relationship whatever to what we heard. I want to know that and I would like to know it now because if the amendments are just the amendments that they talked about at the beginning of the public hearings, or if the amendments are just amendments that are put forward by brilliant legal scholars like legislative counsel, because the bill would work more effectively with those amendments, then we wasted a number of days listening to people who really thought that we could have an impact.

I know for a fact that the amendments that we are putting forward, in particular those requested by my colleague Mr Elston, arise from two sources: first, his own view as a politician about the way in which government should function; but second, and more important, what we heard when we had public hearings.

It will be very sad for this committee to begin consideration of its very first bill in a brand-new Parliament—first NDP government in the history of Ontario—if it just



began in the same old style of: "Yes, let the public come in. Let them have their say. Let's pretend that we are listening to them." Then we have a series of amendments that are drafted as if they had never been here, as if they had never set foot in this room, as if they had not worked for, in some cases, weeks to craft down to 15 minutes—we say, "that is all the time you get, but we want to hear from you." Do any of these amendments arise from what we heard? If not, let us hear from the government about that. Let us hear the government's assessment about what went on during the public hearings.

I think there were Liberal members who sat through all of the public hearings. I know my friend Mr Kwinter was here for many of them. I was here for many of them. I think Mr Elston was here for all of them. We were listening very attentively. We heard a number of people say: "This bill is needed. We need to do this." In fact, we had some groups saying: "It is not enough. It is taking the first step, but there is a long staircase to go up and we expected the New Democratic Party government to go further."

We heard other people come in and say, "There is absolutely no way in the world that this government should pass this bill, should interfere with my right to privacy between me and my employer." These were mostly men, I think, although I think there were a couple of people on the other side, if I can put it like that, who argued that this bill represented an unacceptable invasion into matters that are private.

We heard some very personal stories during those public hearings. Some of them did not bear directly on the substance of the bill, I would have to say and I think I or others did say at the time, "While your story was an important one to hear, unfortunately this committee is not seized with the power to do anything about that." I am thinking in particular of the access cases. Remember the government determined, in its wisdom—put "wisdom" in quotation marks in this case—not to proceed with Bill 124 to deal with some of the problems, I emphasize some of the problems, of access in this province, access to children of a marriage when a marriage has broken down.

We could not deal with that, although, let's be frank about this, there are many, many people in this province who believe that if they are to be denied access, their willingness to continue support is compromised. Now, we know that is not what the law says. The law says something very different. The law says the two are separate and shall remain separate.

But we did hear people before this committee say: "I do not care what your laws say, I feel it. You do not know what it is like," they said, "to be denied the opportunity to see your children, and yet you still want me to pay money and, not only that, you want to take it off my paycheque even before I see my paycheque." And I say, yes, that is what we want and that is what we are going to do, because the issue of support is so very important and it is a fundamental right of a parent who is the beneficiary of an order to support to have that support and to leave other questions for consideration elsewhere, including the question of access.

But through it all, Mr Chairman, all of the matters that we heard during our public hearings and the discussions

that we have had, regrettably I am forced to say that the government has not been willing to admit that this bill, important as it is, represents an administrative change in the way in which the support and custody order enforcement branch does its business, to make the doing of its business more efficient and more effective, and does not, and will not, and cannot really address the issues of poverty among some of our citizens, poverty in the way in which it affects children. So I disagree with my friend Mr Wessenger who says that one of the chief aims of this bill, chief among its purposes, he says, is dealing with child poverty.

Particularly is that the case now, when so many of the people who are subject to an obligation to provide support and would willingly do it if they had any money, are out of work or the subject of layoff notices or have not been able to secure a job in many, many months.

That is the reality of a recession, I say to you, Mr Chairman, and to the members of this committee.

If we really want to get on with dealing with questions of poverty, well, we should do that one of these days; not in this bill. This bill is an administrative matter. It saves the Ministry of Community and Social Services some money and it allows or provides collection tools to the Ministry of the Attorney General that it has not had before.

Some information was provided to us at the beginning of this clause-by-clause consideration of the bill, which I wish had been available to us earlier. I think probably this research is not new research, and it would have made our deliberations far easier.

I see, for example, an analysis of the support and custody order enforcement case load for January 1991. If any committee members care to follow this, the information is provided in Briefing Information for Members of the Standing Committee on Administration of Justice, Bill 17, etc submitted to us—well, it is dated 18 February. We saw it today, I guess, for the first time.

But if you go through it and if you look at section A on the page identified as SCOE Case load Summary Statistics, January 1991, if you look at this chart, it does not take you very long to see that, notwithstanding the evidence that we had before this committee during its deliberations and consideration, some 35.3% of the case load is doing not so badly, thanks very much, with 16.2% in full compliance, 13,539 cases. Some 19.1% have some arrears owing, but these are cases where funds have flowed within the last 35 days.

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It is the second box, the B box that all of us should really be concerned about; all of us should have far more information about what is in the B box, so that we could make a better judgement as to whether or not this bill is going to make any difference.

Let us look at the B box. These are cases where no money has flowed within the last 35 days. Some businesses do not pay for 90 days, but we do not have a breakdown of 30, 60, 90 days, which is customary in business terms. I am glad of that, really, because any default in this case creates a problem. But you notice that in box B there are two categories of cases: "Program unable to enforce,"

and look what you have under there. "Transferred out of province," okay, Bill 17 is not going to help there. "No filing package received from creditor," this bill is not going to help there, although there are a significant number of cases there, 17.3%. "Enforcement stayed by the court," there the court says, "We're not going to enforce those."

Then there is the second box, (2) "enforcement undertaken/pending." Now that really is the heart and soul of the case: 42.5%—35,572 cases where enforcement is undertaken or pending. What does that mean? Does that mean there are garnishment proceedings for those 42.5% of the cases? If we had had testimony from the ministry at least about that line, if they had been able to show us that Bill 17 is going to change that figure and move it from 42.5% to 2.5%, I think all of us could have said, "Let's get on with it." But frankly, and this is a great disappointment to me, Mr Chairman, I did not hear that kind of testimony from the Attorney General while we were considering this bill. Nor did I hear it from any of the witnesses who came to testify, but to tell you the truth, it is not those witnesses who had the responsibility for showing us how we would go from 42.5% to 2.5%. They were here to tell us what we could not have found out ourselves about the bill. Had we had that information, these hearings would have gone far easier and this consideration would have been far easier, but it is too late now. We are at clause-by-clause now and we should get on with it.

I want to thank the people from the policy development branch of the ministry who provided us with the other handout, Information Requested by Members of the Standing Committee on Administration of Justice, Bill 17. Again, this one is dated 25 February. It is fresh out today. The information that I am interested in, Mr Chairman, is in appendix B, which provides examples of statutory opt-out provisions in a number of jurisdictions within the United States. We will be moving an amendment to the bill, which provides for creditors and debtors to avoid the SCOE system of enforcement. By the way, we are not going to be using SCOE for very long because we are going to change the name of the act to something, I think, more attractive. Changing the name does not protect the innocent or collect any more money, but we are going to be doing that as well. These clauses will be effective as we get into the discussion surrounding the amendments that we are going to bring forward concerning Bill 17 and the ability to opt out of the enforcement provisions of Bill 17, and I commend these examples to my colleagues on the committee.

Finally, Mr Chairman, I just want to say another word about the funding of this program. The members of this committee should be under no illusions about whether or not the passage of this bill is going to change the lives of very many people, if the government of Ontario continues to under-resource this branch.

This branch, as a result of this bill, is taking on a far more significant workload. Let us not kid ourselves about that. Virtually every order for support is now going to come under the jurisdiction and be the responsibility of SCOE. That goes beyond what exists now. We established that during our hearings. So there is far more work to do;

there are far more cheques to be entered into a computer when they arrive from the employer; there are far more employers to fight with over discrepancies in amounts; there are far more employers to fight with if there is an error in the order or if the employee, the debtor, has left. And then there are far more cheques to send out. Hopefully, some more of them will be in a more complete amount.

This is a huge case load already and it is expanding dramatically and if we come back to this committee in a year or two and find out, in considering the nature of enforcement, that funds are not available for this program and that people are waiting, two and three and four and six months, then I say to you that it will be time for the Attorney General at that time to apologize, not only to this committee and this Legislature, but to the province, because in his statement he said that the government was finally going to be dealing with child poverty. Hogwash. And certainly hogwash if money is not made available to this branch to do the responsible thing and make sure that the system is one that is state-of-the-art and really responds to those thousands and thousands of people who now will look exclusively to the government for the support that the court says they have a right to.

I look forward to clause-by-clause consideration. I want to tell the members of the committee that they have heard from us about what amendments they will be seeing from our party. I want to remind them that we have not heard from the government on that score and that is too bad, but the government has, I guess, decided that it would be better just to proceed without an overall discussion, an overall statement, about their intentions. I, for one, Mr Chairman, will be looking to see whether the government's amendments reflect what we heard during committee consideration. It is my suspicion that these amendments do not reflect that and if that is the case I will be very disappointed. More than that, the people who took the time to come to this committee will be very disappointed indeed. Those are my remarks.

**The Chair:** Mr Fletcher, Mr Wessinger has waived the right to make a statement at the outset. Was it a statement you wished to make about the bill?

**Mr Fletcher:** I was just wondering how many opening statements we were allowed.

**The Chair:** Mr Elston and Mr Sorbara did make statements at some length. Mrs Cunningham made a very brief statement earlier.

**Mr Sorbara:** She has not made her statement yet.

**The Chair:** But I do not know how many.

**Mr Fletcher:** Are you making a statement?

**Mrs Cunningham:** Three minutes.

**The Chair:** Mrs Cunningham has certainly the right to expand on her opening comments.

**Mr Fletcher:** Is Mr Carr making a statement also?

**The Chair:** For the interests of brevity, I am sure that Mr Carr is going to waive that.

**Mr Carr:** You never know.

**Mr Fletcher:** Thank you. That is all I wanted to know.



**Mrs Cunningham:** I will add to our initial statement. It had been my intention to make statements as we went through the clauses, but I think, in the interest of letting everyone know exactly where the Progressive Conservatives are coming from, you should know that the intentions for our amendments were made in the initial statement by our critic, Mr Harnick, when the bill was introduced into the House and upon subsequent readings.

I would like to say that the great concern that was expressed at that time was, first of all, the inability, so far, of the government to enforce the support and custody orders to date. Basically, our great concerns, as related to us through our caucus colleagues, are of the operations and the inefficiencies of many SCOE offices across the province of Ontario, not to be judgemental but to raise a real concern, and I am certain that they would, on their behalf, want us to raise those concerns as the committee proceeds.

1400

I would remind the Chairman of the committee that the minister, when in opposition, stated that the resources for the SCOE offices should be doubled. He was angered by the cases that came to his attention as an individual member and in his critic portfolio as related to him by his colleagues.

We are saying that there must be better ways for the offices to operate, but having looked briefly at the report that was prepared for us in the last few days by the director of the support and custody enforcement branch, as one takes a look at the case loads alone that involve much more than getting money from people: 761 case loads per enforcement staff. That is a provincial average, and I think that is what we are getting to. We sit here working through legislation which we hope will be of some assistance and, of course, we are sending a message to people who are not fulfilling their responsibilities and are breaking court orders; but at the same time we have to take a look at the supports which are out there to support families. I look at that as being the work of that office. The people in my office spend more time with Workers' Compensation Board issues and SCOE cases than anything else. We, in this committee, have an opportunity to lighten that workload, and that will be the essence of our two major amendments which were presented by Mr Harnick during the deliberations in the House as his intent; that people who are already paying and whom SCOE do not have to deal with at this point in time, ought to be given, certainly, the opportunity to continue with their good record. I believe my colleagues from the Liberal caucus both mentioned the quality of life and the anger that is involved, in other words, and any interference by government in family life where it is already working, of course, is something that we will be talking about at a later date.

I would also like to say at this point in time that we have placed with you some 10 amendments, two of which I have spoken about. Others are in direct response to requests by witnesses, where we felt that they had, in fact, made reasonable and important and very useful comments. I am not certain which of those have already been picked up by the government because I have not had an opportunity

to look through it, but as we go through it I am sure we will be making comments there.

The other issue that I would like to raise today is that, certainly in the province of Ontario, this will be one very small part of assisting families who are a part of a very large trend in Ontario, and that is families that are having to go through the whole issue of separation and custody and ultimately divorce. We hear about many of the children and many of the parents who, of course, are living below the poverty level. We also hear about the mental health problems of young children and adults, often related to family breakup. I feel that we would have spent our time much more wisely if our committee had had the opportunity to look at one of the pilots that is in process now, something that many of us have been following very carefully, and that is the pilot project around mediation and family law. I would hope that your committee, Mr Chairman, would look at that.

Equally important, we have said it before and we will say it again, we feel that this committee should look at the supervised-access arrangements that are being practised across the province of Ontario, not to the extent that we would like them, but certainly in some parts of the province. I do not feel that this piece of legislation can be enacted on its own to make even a small dent in taking a look at the quality of life of families. In particular, one of the primary problems that we have with the bill is a criticism on behalf of many of the witnesses, and that is, I am not sure how you can deal, to the extent that was brought before this committee, with the procedural difficulties that are inherent in this legislation—how much you put into print, that is. We have had a couple of amendments that would probably more properly be in regulation, but we are so concerned about the whole implementation process that SCOE has to deal with right now that we want to see it written right in front of us so we clearly understand it. So the procedural difficulties, whether they relate to the witnesses who came to us on behalf of small businesses or on behalf of witnesses who came to us from large corporations with automated payrolls and with resource people, I think you will be hearing from us as we proceed through the legislation.

I objected in the very beginning to raising, as one of the objectives of this legislation, the whole concern of child poverty. I have not heard the government refer to it since and I hope they will not. That is the kind of smokescreen that we do not need in dealing with real problems in society, especially for children in these times. I feel this legislation may have an impact, but certainly, taking a look at the operations of SCOE and giving more support would be much more valuable than spending the kind of time that we have to spend on writing laws in this province, and the kind of resources that we have as we proceed with them, as opposed to providing the kind of programs that families need to see them through the tremendous challenges of daily life, in our school systems, our health care systems, our social systems and in our legal environment.

So with that I would like to close our remarks on behalf of our party. I would ask for some support from yourself as we go through this. I think it is going to be

somewhat cumbersome and in the beginning it might take us a while to get into it. I do not want to delay the progress of the committee, except from time to time I may ask for a short adjournment just in order to keep things moving along more smoothly, because of, I think, a lot of information at the last minute. But I thank you for the opportunity.

Section 1:

**The Chair:** I believe I have already asked for questions, comments or amendments to section 1 and Mr Wessenger was trying to respond.

**Mr Wessenger:** The first amendment that I am going to make is—and I might suggest that members of the committee refer to the annotated version of Bill 17, which may be of some assistance to them in going through the amendments; it sets out the purpose of the bill, then the government amendments that are proposed and the purpose of the amendment. The first amendment that I have is set out on page 3 of the annotated version of Bill 17. I should mention that this amendment I am proposing does require the unanimous consent of members of the committee, because it amends the whole previous act with respect to the definitions.

1410

**The Chair:** Is there unanimous consent for this amendment?

Agreed to.

**Mr Wessenger:** Okay. I move that part I of the bill be amended by adding the following section:

"1. The Support and Custody Orders Enforcement Act, 1985 is amended by striking out 'debtor' and 'debtor's' wherever those words appear and replacing them in each case with 'payor' or 'payor's' as is appropriate."

I might add that this amendment was previously submitted to the committee. I believe two deputations had objection to the word "debtor" in the legislation, and by changing it to "payor" I think it meets that objection.

**Mrs Cunningham:** Just a comment—

**Mr Sorbara:** If Mrs Cunningham wants to speak I will speak after her, if it is all right.

**The Chair:** Oh, you are not waiving.

**Mr Sorbara:** I know Mr Fletcher is just waiting for my remarks. My objective every day is just to see how much I can upset him.

**Mrs Cunningham:** I just wanted to point out that this was very clearly the concern of many of us. Certainly both the Liberals and ourselves spoke to this many times to the witnesses as we asked questions of them. I think it was more than just two who came before us. I think many of us raised that concern, as did members of the government as we proceeded through this legislation.

**Mr Mills:** I would just like to make a remark for my colleague and friend Mr Sorbara, that here is an example where we have listened to the people who came before this commission. Contrary to your belief and understanding that we may not be listening, I think this is the first example on the first amendment where we have listened and taken heed of what the public said to us.

**Mrs Cunningham:** This is one of the easier ones, Mr Mills.

**Mr Mills:** I wanted to make that point.

**Mr Sorbara:** I am glad my friend Mr Mills pointed that out, because obviously he is going to be the government spokesperson explaining how these amendments relate to what we heard. That is good, Gord. I am glad you volunteered for that. Obviously the parliamentary assistant does not want to do that, but I am glad somebody is going to. But of course Mr Kwinter makes the point, rightly so. He says to the committee: "No, no, you can't have that, Gord, because the government proposed this amendment before we even started the public hearings." So the score is government 0, opposition 1 so far. Now, can I just—

**The Chair:** Are you finished?

**Mr Sorbara:** No, I am not, not at all. This is a very significant amendment. Mr Chairman, I unfortunately was out of the room when you asked for unanimous consent for this. I am not sure what my answer would have been. I was just deliberating about that as I was outside of the room.

But it does not really matter because the government had an alternative motion, if it was not going to get unanimous consent on this one, which would do essentially the same thing. I think this is a bad idea, this amendment.

**The Chair:** May I clarify, Mr Sorbara? It was unanimous consent to introduce the amendment, not to pass the amendment.

**Mr Sorbara:** Introduce it, I understand that, not to pass it. No, I appreciate that. Members in our party will vote how they feel on this thing. This is not crucial to the success of the act. In fact, the reason why I object to it is that it is cosmetic, does not do anything, and it simply portrays a false impression to the public, first. Second, it is an offence to the language, the English language, that is. I do not know if there is a French equivalent to this amendment. I guess I should check the act and find that out. I will do that in a moment, sir.

**The Chair:** The clerk informs me that amendments could be entered in French or English.

**Mr Sorbara:** No, what I am wondering is whether or not there is a French equivalent, whether we are changing the French word, which is "«payeur» Personne qui est tenue de verser des aliments aux termes d'une ordonnance alimentaire." Okay, so we are using "payeur" instead of—

**M. Poirier :** «Débiteur».

**M. Sorbara :** «Débiteur» ? Merci, monsieur.

**M. Revell :** Oui, Monsieur Sorbara. Il y a une motion disponible en français qui est à changer le mot «débiteur» contre le mot «payeur».

**Mr Sorbara:** Merci beaucoup. I apologize for the fact that my Black's Law Dictionary is out of date in that it is the third edition. But I do not think either the fourth or fifth edition would change the definition of "debtor" very much. It is very simple. It says: "Debtor. One who owes a debt"—what is someone who is the subject of a support order? Someone who owes a debt—"he who may be compelled to pay a claim or demand. Anyone liable on a claim, whether due or to become due." That is why even if you



do not have to pay yet, you are a debtor. Understand the legal definition, "whether due or to become due." The authority for that is *Cozart v Barnes*, CCASC. I wonder what that stands for? I will have to defer to legislative counsel.

So that is the appropriate definition of "debtor." What does it say about "payor"? Payor is "One who pays or is to make a payment, particularly a person who is to make a payment of a bill or a note." The correlative is "payee." The payor is the one who pays, and the payee is the one who gets paid.

So why are we changing the language? I appreciate that you would like to make it look attractive to the general public. But the fact is that our work here is to write laws, and when we write laws we use words that have the appropriate legal meaning. What we are talking about here, when we refer to someone who is the subject of a support order, is someone who owes a debt, someone who has to pay something whether it is due or to become due. You cannot solve the problem of child poverty by changing the legal meaning of the word "debtor" and using a word like "payor," which ought not to be used in this circumstance. It simply ought not to be used.

I suspect the motion is going to pass. I guess I am glad it got unanimous consent so that we would not have to read the alternative motion into the record. But I for one think that you should call something what it is, and particularly when you are writing laws you should use the words that have the correct legal meaning. So whether or not you are going to have it "payer" or "payor"—that is a problem for the *Toronto Star*, I understand—the correct legal word is debtor and I regret the fact that legal counsel has allowed you to manipulate, bastardize, the language a little bit with "payor" instead of "debtor."

**Mrs Cunningham:** I am personally pleased to see that the legal counsel is enlightened to today's world. I do not consider myself a debtor because I owe—

Interjection.

**Mrs Cunningham:** No, I do not like the term. I do not think kids should call their parents debtors any more than we should consider ourselves debtors because we have got so many days to pay for something. If people in this room feel that way they should rip up their credit cards. It is the same thing as far as I am concerned. But I would suspect this is not going to be Mr Sorbara's great concern in the long run, and I would also challenge what "legal language" means. I am glad there are fewer lawyers writing legislation if that is the case, or getting elected, because I really think that we in fact—

Interjection.

**Mrs Cunningham:** No, I am fed up with it; I really am. I spent so many years on councils where I had to listen to people argue about words that do not mean a damn thing. This one I think is saying exactly what it means, with respect to my friend and colleague—most people would not believe that, Greg, but they know that we are very fond of each other—and I will say that I think this is more progressive, and if that is what we are getting from our younger legal people, then I am pleased.

1420

**The Chair:** Any further comments? Mr Poirier.

**Mr Poirier:** I am not a lawyer so Dianne can rest reassured. But I have got another nightmare for her, I am one of three honorary members of the Association of Translators and Interpreters of Ontario.

**Mrs Cunningham:** That will not be a nightmare.

**Mr Poirier:** Well, it may end up to be. Obviously, in that perspective words and definitions of words are very important, and "debtor" to me does not necessarily mean a negative sense. But if you look at the definition that my friend Sorbara brought forward from his very antique law dictionary, which would be—if they were payors, they may not be under SCOE in the first place. I am not cringing at the use of the word "debtors." If some people feel offended by that, I think it is overengaged sensitivities pertaining to the word. Obviously it would be nice, Utopian, to see an area in Ontario where you would not even need SCOE. The fact that we do need it so much is very distressing, that people are not respectful of their debts, because we all have debts and we all have credits. But in that particular case with SCOE and the intensity of what is happening under SCOE, I think the word "debtor" is quite appropriate and I think, with all due respect, that the government motion was being oversensitive to the use of that word, which is obviously still in the English language dictionary as far as I am concerned and still with a very honourable definition. If some people are uncomfortable with it, well, too bad, because some of us could put a credit card that is maybe full up, on the table and not feel bad about it. So even though we ourselves are debtors, we do not feel bad about it and if some people are caught as debtors under SCOE, they should not feel bad about being there; but once you are there you are still a debtor.

**Mr Kwinter:** Let me just briefly expand on the same issue. To listen to the government position and to the ministry position, the bulk of the people under SCOE are, in fact, debtors. That is the reason for the legislation, that according to them there are relatively few who are payers. As a result, it would seem to me that, notwithstanding we are splitting hairs over the definition, there would be some merit in taking a look at it because we really are talking about debtors.

**The Chair:** Mr Sorbara. You are responding to the bill, not to Mrs Cunningham?

**Mr Sorbara:** I would certainly respond to Mrs Cunningham. She said that she does not care what kind of language we use. But words have specific meaning. I only choose to speak of this again because this is a perfect example of what this new government is doing. It is dealing with cosmetics. They talk about child poverty and then introduce a bill to make it easier to collect money. It assists them administratively. It gives the government new collection powers. It does not do a damn thing about child poverty.

The idea that you would want to bring forward an amendment to say, "payor," which these debtors are not, many of them, instead of "debtor," which these debtors, all of them, are, is just absolutely silly and I do not know really why you are doing it. Dianne Cunningham does not

like lawyers, but lawyers argue cases in court and some day, some lawyer is going to latch upon the government of Ontario's new definition of a payor and that is going to have an impact on some case at some time. The fact that she finds that unfortunate is just the way the world is. That is what lawyers do and I think it is important work. The fact here is that, indeed, in the case of many people who will be the subject of automatic deduction, they are not even the payor. Guess who the payor is; the employer is the payor. They are the ones that are going to be paying into the support and custody order enforcement branch. They are the payors. They are not the debtors. They could become a debtor if they fail to make a payment. That is what the bill says. That is what is going to happen to them. They are going to become payors and then, if they fail to pay, they are going to become debtors, because they are going to owe a debt.

I guess we are going to have a vote on this and of course, maybe some of the government members want to speak on it, who knows? The fact is that I simply lodge this tiny little, insignificant, "Oh well, it does not mean anything," objection to the misuse of the language, notwithstanding that someone that testified before us said they would prefer to see "payor" rather than "debtor."

I do not make any bones about the fact that I am a debtor. I owe lots of debts and some of them are going to come due pretty soon and therefore I am a debtor. Legally I am a debtor. Now and again I am a payor when I have enough money to pay those debts. When I do not pay them, I might become a debtor in default. Unfortunately, with SCOE, there are too many debtors who are in default of their legal obligations to pay. They are not payors, and that is why we have this bill.

So, Mr Chairman, all I can tell you is that legislative counsel have succumbed to the wishes of the political expedience of the new Attorney General of the province of Ontario and it looks like we are going to start calling "debtors," "payors," even if they do not pay and even if they have no legal obligation to pay because, after all, it is the employer under this act who is actually going to be the payor. SCOE will be the payee and the recipient of that payment will be the spouse who is the beneficiary of the order for support.

**Mr Wessinger:** I would just like to say first of all, on the question of language, I prefer to have positive connotations rather than negative connotations and I certainly want this act to have a positive connotation. The other aspect I would like to mention is this whole question of child poverty. I agree that this is not going to make a substantial difference to child poverty, but there is quite a difference in saying it will make no difference with respect to child poverty. There has been a study done with respect to families under the Divorce Act which indicates those living below the poverty line and those above, and I have the statistics here.

This was 1988; the size family, two; those receiving support payments, 33% of the families were below the poverty line; those not receiving support payments, 44% were below the poverty line. Size family, three, with support, 53% below the poverty line; without support, 70%

below the poverty line. Family size, four, with support, 71% below the poverty line; without support, 85% below the poverty line. Family size of five, with support, 80% still below the poverty line; without support, 98% below the poverty line. This information is available if anybody wishes it, is that correct? I just thought I would put that in the record.

**Mr Sorbara:** I would not mind copies of it.

**Mr Mills:** Like many of my colleagues, this is my first experience in this format of discussion and it has been a tremendous learning experience for me, I must say, and I am sure I speak for the other folks of our party there for the first time.

I looked this over, I came to this first amendment and I thought, in my limited experience here, that it was going to take about a minute at the most. I shudder to think of all the rest here that have some meaning. This, in my estimation, had little meaning, and we have been debating for almost a half an hour the pros and cons of "debtor" and "payor". My wife has often told me that my greatest shortcoming is that I am always in a hurry, and I am in a hurry here today to get on with this.

I would just like to say, perhaps, from my own point of view, that as one gets older, one gets gentler and kinder. In my young days I was quite a different sort of person than I am today. I would say that I think the language of "payor," in my estimation, is a gentler, kinder way of telling someone that he owes money in support of his child. If that makes that collection or that fact of life that much easier, that much gentler and that much kinder in the workplace, then I am for it. I understand the point of view that you are making in so far as the correct definition in the English language and about the word "debtor," but I can really support this. I think it is kind, I think it will help the bill and I only wish that we could have got on with it in a couple of minutes because I am becoming sort of traumatic about how long this is going to take. So with those words—

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**Mr Sorbara:** These things take time.

**Mr Mills:** Yes, and as I say, this is a learning experience for me and I appreciate all the comments. It has all registered in my brain and I am sure that it is going to enhance my education of the system. At some point in time I will look back—I keep a diary every day, I try to, of what happens—and pass all this on to my grandchildren. I think it is wonderful that we have so much conversation about that one little word. Thank you.

**Mr Sorbara:** I know that my friend Mr Mills is going to note this in his diary and his grandchildren are going to enjoy it, and that is because he probably writes well.

My speeches on this subject have to do with two things: one, writing well—and that is the small point—and the larger point, although it is not so terribly big, is that in my five and a half years in government, it seems to me we spend too much time changing the bloody words. We have gone from people who are crippled to people who are developmentally handicapped; from people who are handicapped to people who are physically challenged. We keep



changing the words and putting out new press releases and changing the insignia all over the government of Ontario because we have got a new style now, but we do not change the substance.

This is our problem with this bill, that it is administrative. It should just go right through, no problem, it is administrative; give them these powers to intervene in the workplace. But then the Attorney General wrecks it all, in my view, by standing up in the Legislature, in a bill that I was anticipating—because remember good old Ian Scott had worked on this already; he was going to do it. I do not know what Scott would have said when he stood up, but it just upset me to no end when Howard Hampton, the new Attorney General, got up and gave a speech about child poverty instead of machinery of government.

The story on machinery of government is that we have done a terrible job, and Scott admitted this to me so many times. We have done a terrible job on collecting this money in SCOE. "The place is a disaster," he would say, and everyone knows about it who is an MPP because they got the phone calls every day of the week in their office: "I haven't got my cheque, I haven't got my cheque. Please do something. My kids are hungry." So Hampton has the gall to stand up and start talking about child poverty and he introduces a bill which makes some administrative changes.

We do the same thing when we tell lies about how we define people. These are debtors. All of us are debtors in this society if we owe someone some money, even if it does not have to be paid for 1,000 years. They are not payors, and that is the problem here. They do not pay so they are not payors. So we will just create a huge fantasy saying: "Okay, let's call them payors. They'll feel better." That is the problem with this new government. They think they are going to make everyone feel better by choosing the right language, and they are not going to make anyone feel better until they get on with income redistribution and changing who has what in this society. We have not seen one piece of legislation to that effect in the two months that we have been in this Parliament, or at least the Legislature sitting, and that is after 55 years of being denied the benefit of a New Democratic Party government. That is what upsets me, and I am determined to get the last word in on this section, Mr Chair.

**The Chair:** You realize what he is saying, Mrs Cunningham? Your making a statement propels him to make verbal—

**Mrs Cunningham:** I have tried to control myself, but this is a perfect example of my observations on lawyers as far as I am concerned. I like lawyers; it is what they do.

**Mr Sorbara:** What do you call 500 dead lawyers?

**Mrs Cunningham:** But in spite of it, if Mr Sorbara—

**Mr Sorbara:** A good start.

**Mrs Cunningham:** —if Mr Sorbara could bear with me just for a moment, could we have from the legislative counsel a response to Mr Sorbara's concerns? Are we playing with words here?

From a point of view of trying to produce any legislation that appears more positive, I obviously feel strongly about the word "payor" but what is the response?

He read from his old book there.

**Mr Poirier:** It is right here.

**Mrs Cunningham:** The old one, what is it called? Black's Law Dictionary. Both terms seemed like they were suitable to me from what he read and I listened carefully, but could we have a response to the concern?

**The Chair:** The question was of the legislative counsel. Would you wish to respond to that?

**Mr Revell:** I have no problem with it. First of all, the choice of whether to use "payor" or "debtor" in this case, I think really is a policy choice. As I was trying to say earlier, I do not get a vote on policy issues. To that extent, it really is something that should be answered by the parliamentary assistant. But in terms of this particular bill, Mr Sorbara did raise one issue as well. If we change it here, is this going to have implications elsewhere? I think on that question I would have to say no, because "payor" will be a defined term within the legislation. Everything will work in this particular piece of legislation without any problem whether we left it unamended or whether we change it to "payor." To that extent, it is a pure policy choice between the two and I should let the parliamentary assistant address the policy issue.

**The Chair:** Mr Wessinger, would you? Would that be all right Mrs Cunningham?

**Mrs Cunningham:** No, I think Mr Wessinger talked about the policy—

**Mr Wessinger:** I did talk about the policy aspect.

**Mrs Cunningham:** —aspect and I just wanted to be reassured.

**The Chair:** Any further discussion?

**Mr Mills:** He can have the last word.

**Mr Sorbara:** Obviously, Don Revell, legislative counsel, was absolutely correct in what he says. He has been writing this stuff for quite a long time and doing a very good job of it. He and I spent five and a half years together, I as chairman of the regulations committee of cabinet and he obviously in the capacity that he holds, and he does his work quite well. But just to point out for the record, Mr Chairman, in a bill of this sort, if it is a defined term, you can say anything means anything. You can say in a bill, "For the purposes of this bill, the number 1 means the number 2," or "the number 2 means the number 20," or "For the purposes of this bill, the word 'black' means 'white' or the word 'white' means 'black.'" So it is a defined term.

Within the perfect construct of this bill, yes, you can use "payor", you can use "charming good fellow", you can use anything you want. That is why, probably, if you used the word "debtor" you would not have to make it a defined term because it has a legal meaning. Now, you might want to make it a defined term to give it specific purpose and meaning in the context of this bill. Of course, I stand corrected. That is right. Probably no lawyer would be able to call upon the definition of "payor" in this act and change the definition of "payor" or "debtor" for some other purpose in some other case.

Here, within the context of the bill, the word "payor" will work, but it is offensive and it is offensive for the reason I referred to before, because it is trying to make everyone feel good and the purpose of government I do not think is to make everyone feel good.

Remember the Attorney General, sitting right beside you, Mr Chairman, talking about how, as a result of this bill, in our public education program, we are going to make people start feeling good about paying their support? Give me a break. Attorney General, will you get off of it? If you really believe that, they have got a bridge in New York that you can foreclose on.

So I defer to legislative counsel and I just say, once again, that it is symptomatic of the problems that we are confronting in this committee and in this bill and in the government's handling of this matter.

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**The Chair:** All those in favour? Opposed?

Motion agreed to.

**Mr Wessenger:** Mr Chair, I have a follow-up amendment.

I move that the definitions set out in subsection 1(3) of the bill, as printed, be amended by striking out "debtor" wherever it appears and replacing it in each case with "payor" and that wherever "debtor" subsequently appears in the bill, it be replaced in each case with "payor."

**Mr Sorbara:** That is not part of the amendment that we have here.

**Mr Wessenger:** We have slightly amended it.

**The Chair:** The amendment, I believe, is page 2. However, Mr Wessenger has added something in script.

**Mr Wessenger:** Yes.

**The Chair:** I can read the amendment back if the committee wishes, slowly and carefully and without dispensing, as it is not in front of you. It does not seem to be substantially different than the amendment in front of you, though.

So the intent is clear to the committee? Thank you.

Okay, Mr Sorbara. Can we read your comments from the last amendment as—

**Mr Sorbara:** Yes, you can volunteer to do that if you find them interesting. Most people found them rather dull, as I did.

Just as we are at this amendment, can I just get a clarification? I noted that the parliamentary assistant was reading from the printed amendments that we have all been provided, mercifully, by the clerk, in a particular order. Could I get a clarification? At the top of that amendment it said, "ALT-2." It was my understanding that ALT-2 meant that, were there not unanimous consent to introduce the amendment that we have just passed, we would go to ALT-2. So are we absolutely sure that this one is necessary?

**Mr Wessenger:** Yes, we are. The first amendment we passed related to the existing act, as it exists now. This amendment relates only to the bill. So this changes the definition of the bill. The first one only changed it in the act. So this amendment was necessary to change it in the bill to coincide with the change we made to the act.

**Mr Sorbara:** This is the one that you were planning on introducing. You see, there was one that you talked about right at the beginning of the public hearings. It is surprising, as a matter of fact, that you did not tell us that the amendment that you were proposing was out of order in the sense that it would require unanimous consent. Obviously someone in the Ministry of the Attorney General knew that, legislative counsel will know that, because they know all of these sorts of things.

In any event, we had a good long, fascinating discussion on the difference between debtor and payor and I do not propose to go over that again other than to just point out to the committee that the first thing we did, as Mr Wessenger pointed out, was to change the word right throughout the act, so that when you get the consolidated version of this act, and we will need a consolidated version—I would take it that you have finished now, I ask legislative counsel, the Revised Statutes of Ontario?

**Mr Revell:** Yes, sir. We are actually in the middle of the statute revision process. The closing date was 31 December of this past year. The new one will be out on the street some time in October or November of this year.

**Mr Sorbara:** Make room on your bookshelves for the Revised Statutes of Ontario 1990.

**Mr Revell:** Yes.

**Mr Sorbara:** Great. So when you buy the little consolidated version of this act once all this work is done, wherever in this act the word "debtor" appears it will be replaced by the word "payor." Can I just ask the parliamentary assistant why he did not change the definition of "creditor" to "payee"? The obvious answer is "a matter of policy," but why is that? I want a better answer than that.

**Mr Wessenger:** I do not think the word "creditor" is in the bill.

**Mr Sorbara:** What word do we have now in the bill?

**Mr Wessenger:** The person entitled to receive support.

**Mr Sorbara:** Why do we not we call that person the "payee"?

**Mr Wessenger:** It is—

**Mr Sorbara:** A matter of policy.

**Mr Wessenger:** No, I would just say that that is a matter of draftsmanship, the way the bill was put out. There is no connotation to the person who is receiving support so that is the reason for not having a definition. Obviously it was not felt necessary to have a defined term.

**Mr Sorbara:** So the ordinary language did the job?

**Mr Wessenger:** Yes, the ordinary language did the job.

**Mr Sorbara:** Just like "debtor."

**Mr Wessenger:** I am not certain of that.

**Mr Sorbara:** Okay.

**Mr Wessenger:** In fact I would say—

**Mr Sorbara:** Enough said on that subject.

**Mr Wessenger:** —"debtor" would have had to be defined anyway.



**Mr Sorbara:** Soon we will get to some good Liberal amendments so there was enough said on this subject.

**The Chair:** All in favour of the amendment as presented? Opposed?

Motion agreed to.

**The Chair:** Any further amendments to section 1?

**Mr Wessenger:** Yes, this amendment is set out on page 4 of the annotated version of the act.

**Mr Sorbara:** There is no page 3—

**Mr Wessenger:** This is page 3 of the amendments, but it is on page 4 of the annotated version.

I move that the definition of—

**The Chair:** The clerk suggests that we not use the annotated version of the act but use page references in regard to this document here, for the purposes of recording.

**Mr Wessenger:** For the purposes of recording, okay. For clarification, though, it is page 3 of the government amendments.

**The Chair:** Mr Wessenger moves that the definition of “income source” in subsection 1(1) of the act, as set out in subsection 1(3) of the bill, as printed, except the clauses, be struck out and the following substituted: “‘income source’ means an individual, a corporation or other entity that owes periodic payment at regular intervals to a payor of.”

**Mr Kwinter:** I hate to keep dragging us back to the first amendment, but if you take a look at the line and it says—one of the problems with using the word “payor” as opposed to “debtor” is that “debtor” gives the connotation that you owe it and there are those who feel you do not owe it; it is just an obligation that you have to pay as it comes due. So should this not say “a corporation or other entity that pays periodic payment at regular intervals to a payor” as opposed to “owe”?

**Mr Poirier:** Good point.

**Mr Elston:** Very good point. Did you say you were a lawyer?

**Mrs Cunningham:** Probably not, with that good suggestion.

**Mr Wessenger:** Obviously there could be payments made that are not legal obligations and so therefore you want to ensure that it only applies to the legal obligations.

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**Mr Sorbara:** I want to invite the parliamentary assistant to address the committee as to the purpose of this amendment to the bill, so could he do that? He has changed but a few words there. So just tell us what you are trying to accomplish.

**Mr Wessenger:** The purpose of the amendment is actually described on page 4 of the annotated version.

**Mr Sorbara:** But we want to hear from you.

**Mr Wessenger:** It is to make it clear that it is payments that are made at regular intervals, in the way of salary or wages, and not to catch some other type of payments that might be made.

**Mrs Cunningham:** Actually, there was a complaint from one of the witnesses about the words “periodic payment.” They wanted it defined, and I think “periodic payments at regular intervals” probably does it. But that was why, I am assuming from my head—

**Mr Wessenger:** Yes, and there was a representation made to that point.

**Mrs Cunningham:** A response.

**Ms S. Murdock:** Actually, it is the corporation or individual that owes the money through work done or performance performed or whatever and so it is owed, although initially the suggestion sounded really good.

**Mr Mills:** I would just like to have it on the record that this is, I think, another example of how this committee listened to the input from the deputations made here. That was one of the concerns and the government has recognized that concern and introduced it as an amendment. Just for the record.

**Mr Sorbara:** Let’s just have an adjudication on that. Can we find out from the parliamentary assistant whence this amendment? You are not under oath, but tell us the truth anyway. Where did this come from? Who thought this up? Did someone testify here and say, “Oh, my God; we’ve got a problem,” and then you changed it, or what?

**Mr Wessenger:** Basically there was confusion about the actual meaning.

**Mr Sorbara:** Of what? The actual meaning of—

**Mr Wessenger:** Of the original definition, and this was to clear up the ambiguity in the actual meaning.

**Mr Sorbara:** Before we even began public hearings.

**Mr Wessenger:** No, this came out during the course of the public hearings. It came to our attention as a result of the representations made that there was ambiguity—

**Mr Sorbara:** Mr Chairman, the score is now 1 to 1. We acknowledge that the committee did listen to someone who was concerned about the vagueness of the words “periodic payment.”

**The Chair:** Thank you for the acknowledgement, Mr Sorbara.

**Mrs Cunningham:** I am going to go back to this word “owes” and pose a bit of a challenge for the committee here. If in fact we were trying to be more positive, in order to be consistent, maybe it is not the word. Maybe we are not supposed to be saying—what was the word that Mr Kwinter raised? Was it “pays”? Well, “provides” or something, but if you want to be positive here, to be consistent, one should think that the corporation in a positive way would either pay or provide periodic payments, or there must be another word. But “owes” is not consistent with the intent at all and there must be a better word, if somebody wants to think it up. But I think Mr Kwinter made a very real point.

**Ms S. Murdock:** The whole intent of changing the word to “payor” rather than to “debtor” is to be positive. It is to move from the negative to the positive, but in this particular instance the verb “owes” refers to the income source, income source being the corporation or the person

who owes the money for work done or performance done or whatever the amount of money that they are getting it for. It is an owed piece of money, so that it is not negative to the individuals as the payor or the receiver of the money. It cannot even be considered negative to the corporation because it is common in collective bargaining that it is owed money for work performed.

**Mr Sorbara:** I do not care very much about the amendment that was brought to the bill. It does not do very much. It adds the words "at regular intervals." Fine. Okay. You want to put "at regular intervals," that is not a problem. I would have thought that a periodic payment is paid at regular intervals. That would have been, I think, the ordinary meaning of the language, but who cares about that? The importance of this particular section is that this definition of income source defines the sweep and catch of this entire bill so it is important for that reason and, I would submit, for that reason alone.

If income source is defined narrowly, lots of people can get out of the obligation, right? If income source is defined narrowly, you can get out of the obligation because I get my salary from something that is not defined as an income source. So, my friends, I will tell you that if I spend a little bit of time on this section, I am doing it in this case because it is part of the basic machinery of the legislation that we are being asked to pass. I repeat, if income source is defined narrowly—let's say income source was defined as a public corporation that made periodic payments, or a government source—then you could only automatically attach the wage of a government payor. Oh, my God, there I have used the word "payor" in the wrong context for the purposes of this bill. So the definition of income source is extremely important.

I would like the government to be able to describe to us in ordinary, non-legal language how far this net spreads over the payors of wages and salaries and commissions and benefits and disability payments and annuities. Look at clause 1(3)(f). Clause (f), by the way, I say to the new members of this committee, is the section which reads, "income of a type described in the regulations." That really means "whoever else we want to bring in later on that we forgot right now," because the government makes regulations not by bringing it to Parliament but by bringing it to cabinet. Some of you may even sit on the cabinet committee on regulations and if you do, you will know that the real power is in that committee because once the government has the authority to make regulations they can define anyone else as an income source under the regulations. This is a powerful section. Pay attention to it. You will see it in bill after bill that your government brings forward. Any other group that may be defined by regulation—sweeping in its power to scoop in.

Legislative counsel here pays very close attention when they allow that kind of section to be written in. They want authority for the proposition that a regulation should be made, and when the regulation is made they take a careful look to make sure that the government has the authority to make regulations.

I think it is time for the parliamentary assistant to the Attorney General to tell us whom they have in mind, and if

they do not have anyone in mind, let's get rid of it. If they do have someone in mind whom they have not thought about in (a) wages, (b) commissions, (c) a benefit under an accident, disability or sickness plan, (d) a disability, retirement or other pension, or (e) an annuity, whom else do you have in mind? Who have you not caught in this net right now that you will want to catch later by regulation?

**The Chair:** Is this a question to the parliamentary assistant?

**Mr Sorbara:** Mr Chairman, I am asking the parliamentary assistant to make a note of it because inevitably he should give a speech on this section and tell us what he is trying to do.

**The Chair:** Perhaps at some later point when that comes up. Mr Elston.

**Mr Sorbara:** Now hold on a second, Mr Chair.

**The Chair:** I thought you had made a request. Mr Elston and Mr Poirier also wish to speak.

**Mr Sorbara:** Okay. Is there anyone who is not going to be caught by this net? Answer: yes. First of all, the unemployed people who are not making any money at all—

**The Chair:** Which makes it very difficult to pay support, sir.

**Mr Sorbara:** No. You can be wealthy and be unemployed. If you are self-employed, you have an obligation. But what about the person who is self-employed in the sense that he owns his own company and he or she is a one-person company and pays himself/herself a salary? Does that person become both a payor of the wage and a payor under the act? The parliamentary assistant is making notes and is going to answer that, I hope. What about unemployment insurance? If you are getting unemployment insurance, can he tell us whether or not that comes under the act? What about someone who is receiving a periodic gift from someone else? And what else?

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I have not done much study of compensation law but (a) to (f), when you say salaries, wages, commission, benefits, disability plans, annuity, that looks like everyone. I want to know who else is there? I want to know whether a workers' compensation payment is subject to a deduction. While you are at it, does the Workers' Compensation Board have to make the deduction at source before it gets paid out? No answers yet. I am just wanting you to compile them.

Does the government of Canada under a disability pension have to make the payment? Are they liable if they make a mistake? Because I will tell you, just ask Sharon Murdock, the Workers' Compensation Board makes huge mistakes. Are they liable if they make a mistake and they forget to deduct, and are they subject to the same sort of 50% rule?

As well, what happens if someone who used to be an employee arranges his affairs so that he does not receive a periodic payment paid at regular intervals, as a result of the government amendment? Can the obligation to have deduction at source be avoided under those circumstances?



Finally, if you look at the section and you read it with the two new amendments, that is, the words "at regular intervals" being put in and the word "payor" being put in, listen to how silly it sounds. I am going to read it to you—at least (a) and (b):

"'income source' mean an individual, a corporation or other entity that owes periodic payment at regular intervals to a payor of wages," commissions, benefits, disabilities, "to a payor of wages." If you do not have the right comma in there, the thing does not make sense at all because when you read it, the ordinary language suggests that an income source is someone who owes periodic payments to a payor of wages. Who is the payor of wages? The employer.

**Ms S. Murdock:** You answered the question yourself.

**Mr Sorbara:** Well, I am just telling you that because you have struck out "debtor" there and put in "payor," it makes the definition read very poorly, I would say that to legislative counsel, to you, Mr Chairman, and to the other members of the committee. I understand that my friend Mr Elston has some comments on the section as well.

**Mr Elston:** I am more concerned about the practical nature of this change. I took a look, although I am not supposed to, at the annotated version for the purposes of officially dealing with this stuff. It is helpful in the sense that basically the purpose of the amendment, as described, is to take the onus off the bureaucrats from looking after when a payment is to be made. I think that is the wrong issue to be pursuing if this really is about getting money to people who are in need of support. Basically, if you read the purpose for amendment on page 4, it says it is too difficult because we will have to constantly monitor if it isn't a periodic payment at regular intervals. That is contrary to what the specific nature of this bill is supposed to be about, if we buy the rationale that has been given to us by the Attorney General and by several other people who appeared, which is to put money in the hands of people who need it.

If a person is entitled to receive money on a periodic-payment basis, even though it is not at regular intervals, should we not be getting that money if the person to whom it is owed is not a person who is in compliance with their support order? It seems rather silly just to be putting an amendment that makes it easier for the bureaucracy. I do not understand that, but that is what this purpose for the amendment seems to say.

Basically, it is interesting because I could be involved in receiving periodic payments from a whole series of clients as a consultant; but I would then decide that I will get paid the first three weeks and I will bill out; then I will be paid seven weeks hence; then I will be paid out eight weeks hence; then I will be paid out the next two weeks and I could, it seems to me, make sure that the person who was in long-term contract with me would be outside the definition of income source. Does that not seem rather strange for a piece of legislation that is supposed to deal with income sources for the benefit, not of the bureaucracy's convenience, but for the benefit of receiving money from a person who is not in compliance with their support order? I think we really seriously have to ask our-

selves, should we be amending the bill to include this term "at regular intervals" because there are a whole group of people who will be able to structure their business affairs in such a way as to make sure these people are avoided as income sources.

This is another one of those situations about which I spoke a little bit adamantly during the hearings, where I believe this bill has been set to attach those people who are most unable to defend themselves, if I can put it in those terms, the people who are working poor, who have all kinds of restrictions on them financially. It is a benefit or a boon for those people who can order themselves, because of economic power, in such a way as to avoid the act. We have got to get ourselves together on this or we are going to end up with the same group of people who are most able to pay avoiding the grasp of this legislation. So let us think seriously about this, because this is a serious deficiency.

**Mr Poirier:** I was looking at the term in that motion—and I am addressing my question to the parliamentary assistant—it talks about "payor" in the last line. Would that be assuming that the first definition would have been passed by this committee for you to change from debtor to payor? Am I assuming this correctly?

**Mr Wessenger:** Yes, you are.

**Mr Poirier:** I have been here for over six years and, from the time I sat on committees and the time that I worked as Deputy Speaker and Chair of the committee of the whole House, I do not recall having seen anyone assume that. Usually you ask for a definition to be changed and once it is changed, then you ask for it to be changed everywhere it is found, and only then do you change the definition in the clause that you want amended. I think a certain party that was forming the former government would have been accused of some pretty horrible things if that party had made done that kind of assumption. I think you were in good faith in doing it, but may I respectfully suggest you wait for the proper time and not assume that whatever you want to do has already been passed by committee, when it has not even been brought forward by the committee to consider? I submit that respectfully. Thank you.

**The Chair:** Thank you, Mr Poirier. Mrs Cunningham.

**Mr Sorbara:** When this happens, generally the Chairman offers his resignation.

**The Chair:** Thank you very much for your advice, Mr Sorbara. Mrs Cunningham.

**Mr Poirier:** I want the reaction of the—

**The Chair:** I thought you offered advice to the parliamentary assistant. Do you have a question?

**Mr Poirier:** Yes, I would like the parliamentary assistant's reaction to my comment, please. If I may, Mr Chair.

**The Chair:** Certainly. Mr Wessenger?

**Mr Wessenger:** The motions have been out for the past two weeks ahead of time for people to have seen, so I apologize if there is some difficulty there, but it has been before the committee before. It was not just thrown in today, the one on the payor.

**Mr Poirier:** This is my first participation—

**Mr Wessenger:** I know it is your first participation, I understand that.

**Mrs Cunningham:** Mr Elston makes a very good point and I am wondering, in response to his concerns—I will ask two questions here. One of the suggestions was that the entire section defining income source should be deleted—that was one of our very first suggestions—and replaced with a list of all of the types of periodic payments that will be subject to a support deduction order. I did not think we should see something like that in the legislation, but I am wondering if that is the intent for the regulations.

The other question I have is, under clause (f), “income of a type described in the regulations,” would cover Mr Elston’s concerns. So I guess I have got two questions: one to the government and one to Mr Elston.

**The Chair:** I am sorry, you have two questions—

**Mr Elston:** I can answer the one to me. Basically when you put in there a provision that is going to be saying “at regular intervals,” it does not matter what they describe the revenue source to be.

**Mrs Cunningham:** Yes.

**Mr Elston:** It could be anything, but as soon as you move to make it irregular and as soon as you are in control and receipt of those payments, it completely does away with anything that the regulations might try to clear up. That “at regular intervals” is a real place where people can manipulate and only those people who control their income sources or can manage their income sources, which are generally people who are a little better off, are going to be able to do it. The other people, who work for a living in wage situations, will never be able to manage their way through this and—

1510

**Interjection:** They will now.

**Mr Elston:** —in which case you are probably losing out on catching some of those people who are best able to pay. So it does not answer my concern.

**Mrs Cunningham:** If I can just follow through, perhaps what has happened here is that, in trying to respond to the input we have made things more difficult, we have complicated things. One of the greatest disadvantages of the system, is that once we put the amendments forth, the very people who gave us responsible input to the bill as it stood are not here to tell us how they feel about the amendments. So we always have a difficulty in trying to fix something. We sometimes make it worse. I am thinking that this might be one of the examples of that.

**Mr Sorbara:** Let’s have more public hearings.

**Mr Wessenger:** If I could respond to this concern, the reason why we put in “at regular intervals” and in effect have, as Mr Elston said, perhaps allowed certain income sources to escape from the procedure of support deduction, is for administrative efficiency purposes.

**Mr Elston:** No, administrative ease. It is too much of a bother, it is an inconvenience.

**Mr Wessenger:** No, no. We are advised by the people who will be administering this program that if you did not have this exception it would slow up the whole process, it would make less effective—

**Mr Elston:** It is too hard.

**Mr Wessenger:** It is always a balance, the whole question in any legislation is always a balance, having a system that works efficiently and one that might be ideal, but might just require double or triple the resources.

**Mr Elston:** So this is not about child poverty. This is about bureaucratic efficiencies.

**Mr Wessenger:** The other thing I would like to say is support deduction is only one of our enforcement tools. We still have the whole garnishee process, which could work against it.

**Mr Elston:** But you kept telling us that was too expensive and too cumbersome.

**The Chair:** Mr Kwinter is to speak after Mr Wessenger.

**Mr Wessenger:** Not for these types of people. The person is in default. The garnishee process would work well with the self-employed person who has a corporation, who pays himself a bonus. That would work very well in that situation. We have to have a system that is going to work well and effectively and if we are going to be in a situation, as my friend Mr Sorbara has stated, if in six months after this program comes into effect it is not working efficiently—

**Mr Sorbara:** The Attorney General is going to resign.

**Mr Wessenger:** Then we would have failed in this legislation. The important thing is to have a system that works—

**Mr Elston:** Paul Wessenger will become the Attorney General.

**Mr Sorbara:** Hear, hear.

**Mr Wessenger:** —a system that works efficiently.

Now, I might address some of the other questions that have been raised, too, and that is concerning what types of income might be considered under regulations. One that we hope will be considered under regulations is the whole question of federal payments, but this has to involve an agreement with the federal government. Unemployment insurance payments we hope to include in future as part of this deduction program, or federal pension payments, which cannot be included. So these are the types of things we hope to include under the regulations.

**Mr Sorbara:** If I might just interrupt you, are you telling us at this point that unemployment insurance payments are not an income source under this act at this time?

**The Chair:** Excuse me, Mr Kwinter was the next one to speak.

**Mr Sorbara:** I realize—

**Mr Wessenger:** They could not be collected at the present time because we need the agreement of the federal government.

**Mr Elston:** So the answer is that they are an income source but you cannot collect them.

**Mr Wessenger:** We cannot collect them.



**Mr Elston:** Would they be covered by the definition?

**Mr Wessinger:** Yes, just as Workers' Compensation Board payments are in fact covered by the definition. They would be caught now. The areas that are not caught, as you have set out, are the situation of the independent, self-employed individual. That is not covered, unless that independent individual has a corporation and pays himself a salary, which many individuals do for tax reasons, for other reasons.

**Mr Elston:** They might not pay themselves at all for tax reasons.

**Mr Wessinger:** They may not; that is right. And if they do not pay themselves a salary, then of course they may not be covered—

**Mr Elston:** The board of directors, of whom the self-employed person is the chief director, can then determine when they will make the payments on account of amounts to be paid.

**Mr Wessinger:** That is right.

**Mr Elston:** And in fact could avoid any kind of garnishment, because when the garnishment comes in it is the amount that is owed—right?—at the time they receive it.

**Mr Wessinger:** This would be an appropriate case for a default hearing in the case of a self-employed.

**Mr Elston:** But that is no improvement. All I wanted to do was set out very strongly that what we are trying to do is address child poverty, which is the issue of not getting money to the people who are in need of financial support.

What you have done here is that you have gone away from a tough case, and what we all know and understand from the presenters is that it is not the group of people who are voluntarily paying, or even those people who default sometimes but are paying when they are at work, or when they are working or receiving funds; those are the easy ones, but what you have done for administrative ease—and that is what this thing says, it is administrative ease, nothing else—is that you do not want to deal with periodic payments made at irregular times.

As soon as you tell the community that for administrative ease you are not going to deal with that whole series of income sources, then you are defaulting on the primary principle of the bill, and that is what I object to. Either you are going to be consistent or you are going to make a statement in this committee that says, "This is about bureaucratic ease of administration and nothing else."

**Mr Wessinger:** It obviously is about administrative efficiency and collecting a higher percentage of support payments, but there are many individuals, certainly in my experience as a private practitioner of law—

**Mr Elston:** What about the chief issue of child poverty, which is where we started this day?

**The Chair:** Mrs Cunningham, please.

**Mrs Cunningham:** The Canadian Payroll Association made a point and it said that the term "periodic payment" needs to be defined to clarify whether irregular payments to a payor, such as a draw on commission—I am talking about irregular payments, again—are to be included. Now,

we did not deal with that one. I do not think the draw on commission is here, is it?

**Mr Wessinger:** Yes, it is in the definition, yes.

**Mrs Cunningham:** It is? Is that under clause 1(3)(b)?

**Mr Wessinger:** That is correct. As long as the payment is not recoverable, it is covered by the support deduction. So an advance that is non-recoverable is subject to support deduction. An advance that is recoverable is not subject to support deduction, as long as it is periodic.

**Mrs Cunningham:** As long as it is periodic? Their point is "irregular." I am just trying to support one of the concerns again, but I just think that the very first point, where they told us to delete the whole thing and replace it with a list, is probably a good idea.

Interjection.

**Mrs Cunningham:** Oh, you will, but we have got a list here now; that is the point.

**The Chair:** Thank you, Mrs Cunningham.

**Mrs Cunningham:** Do not thank me, because I did not add one thing with my question or my discussion. I am thinking out loud.

**The Chair:** We would like to recess at some point in the near future, perhaps after we have dealt with this particular amendment.

**Mr Kwinter:** If I could just comment: I know the purpose of the additional words "regular intervals" is meant to give more specificity to "periodic payments." I think it does just the opposite. I will give you an example of a ministerial order on bingos.

**Mr Sorbara:** Oh yes, yes.

**Mr Kwinter:** It talks about "occasional" bingos and it says that charitable organizations can have bingos if they are held on an occasional basis. That has now got so that if you have it six days of seven it is occasional, as long as there is a break in there somewhere. I think that the minute you start talking about "regular intervals," if someone gets paid once every five years but it is regularly every five years, is that a regular payment?

1520

The feeling that I get from the members of the government side is that we are spending a lot of time nitpicking, and you should know that lawyers—that is their job. That is where they make their livelihood, nitpicking. They take a look at an act and they say, "I'm going to challenge that word and I'm going to go to court and I'm going to make the argument." The judge listens to it and says, "You know what? You're right, that word does not describe this particular situation, and I find for the appellant," or whoever it is, and out it goes. When you start putting in "regular intervals," then I think you have an obligation to define what constitutes a regular interval. Then you leave yourself wide open to all kinds of interpretations.

I think that if you leave it at "periodic payments," it does not really make a difference when that periodic payment—it is a periodic payment; but when you start talking "regular intervals" it may seem to be administratively convenient, because it means that if they are irregular, you do

not have to worry about when they are coming through. But you are leaving a loophole that is going to widen out to the point where you are going to be able to drive a truck through it. As soon as the word gets out, they are going to say, "Very, very simple; we'll just change the sequence of when you get paid and that isn't regular." I think that is a problem.

**Mr Fletcher:** Any word can be challenged.

**Mrs Cunningham:** Oh, come on. Put your thinking caps on. If there is a real problem, let's solve it.

**The Chair:** Mr Kwinter was last recognized. Does anyone else wish to speak on this issue? Mr Sorbara.

**Mr Sorbara:** I will defer for the moment to any of the members of the government party if they want to make a comment on it. You are free, by the way, to agree with us on these little points, like "at regular intervals." The government will not kick you out of caucus if you say, "Yes, they're right"—

**Mrs Cunningham:** Or irregular, or irregular.

**Mr Sorbara:** Or irregular, yes. Whether you are regular or irregular, you are free to agree with us on this point and vote with us and just eliminate the words. The government will not come down. You were elected, by the way, to do just that. You do not have to obey orders on tiny little things like this. You would be in trouble if you vote against the bill in its entirety, but we are here to shape this bill clause-by-clause. Feel free to participate and go with the flow and say, "Yes, Mr Kwinter is right," or, "Yes, Murray is right, that section shouldn't be there."

Mr Chairman, I have some comments on the substantive aspects of the bill, but I would just check with them to—

**The Chair:** On the bill or the amendments?

**Mr Sorbara:** —is there anyone awake over there who wants to—

**Mr Mills:** Mr Chairman—

**Mr Sorbara:** Gord is always awake.

**Mr Mills:** Mr Chairman, I am very much awake and very intense and I am learning a lot, believe you me.

**Mr Sorbara:** Gord, this is the first time for me as well. I have never done a clause-by-clause of a bill.

**Mr Mills:** I am not saying that in a flippant way. I know where Mr Kwinter is coming from, because I was—I am not going to say "unfortunate," but I did enforce certain acts under the fuel tax act and I know exactly what he is saying.

**Mr Sorbara:** So you worked for both Monte and me when we were ministers.

**Mr Mills:** Yes. The wording in those acts were wriggled out of by lawyers, and I think there is a case come to light just now that has gone to the Supreme Court where they wriggled out of some wording. So I know where you are coming from and I do not see that you are nitpicking. I am very interested in getting it right and I just wanted to say that for the record, that I am listening. If we do not have any comments, I do not think it is to indicate our disinterest in what you are saying, from my point of view.

**The Chair:** Mr Poirier, a brief comment.

**Mr Poirier:** I just wanted very briefly to remind the government members that I have been here for a number of years and I know that people who default on payments through SCOE, a lot of them become recognized experts at these little nitpickings. They find loopholes, and I am afraid that Mr Kwinter is quite correct. I agree with the PA that it may make a bit more work for the staff or a lot more work for the staff, but mark our words, when you go back to your offices as MPPs and the phone calls for SCOE start coming in again, you will find out that somebody will have read the Hansard for this committee, will have found out that this is a great loophole and they will use it and you will be stuck with it, and not only you but so will the people who are the payees. Because of SCOE, they will be penalized because it says "regular" right here. Mark my words, remember this very well; you will see that we are right.

**The Chair:** Any further comments, or should we recess?

**Mr Sorbara:** We could continue after recess.

**The Chair:** Okay, thank you. We are going to have a recess for about 10 minutes.

**Mr Sorbara:** Before we recess, Mr Chairman, is there some sort of agreement as to what time we are going to today? We will have a recess of how many minutes and go until what time today?

**The Chair:** I leave that open to discussion—5 o'clock, 6 o'clock, what time?

**Mr Sorbara:** It is up to the government. I would not mind 5 o'clock, but you guys have a majority.

Interjections.

**The Chair:** Five o'clock seems to be the agreed-upon time. Shall we recess for 10 minutes, please?

The committee recessed at 1526.

1550

**The Chair:** I would like to call the committee back to order. Is Mr Fletcher in the hallway still? Ah, thank you, Mr Fletcher. Had we concluded discussion on this particular amendment?

**Mr Sorbara:** No. Not by a long shot.

**Mrs Cunningham:** We thought you were going to come back and make an announcement, Mr Chairman. You changed your mind or something.

**The Chair:** Mrs Cunningham, further discussion on this amendment?

**Mrs Cunningham:** No, I thought you were taking a break to take a look at the tremendous concerns—for all of us, by the way—over the issue of the periodic payments at regular intervals. That is what I thought you were doing.

**The Chair:** Mr Sorbara, further discussion.

**Mr Sorbara:** Yes, I do have some more things to say about this section. You see, Mr Chairman, you will want to get through some of these sections very, very quickly. To tell you the truth we will want to get through some of these sections very, very quickly as well. But this section is, as I said, the heart and soul of the bill because you are identifying



legislatively, you are drawing the diagram legislatively: an income source. This bill is going to use the power of the state to intervene in the private relationship between an employer and an employee and attach the benefits flowing between the employer and the employee; so as a matter of statecraft, one of the things that you have to do is identify the income source: who is included and who is not.

My friend the parliamentary assistant to the Attorney General said that all federal payments are not included. Can I ask my friend, does that mean, then, that anyone who works for the federal government is not included, yes or no?

**Mr Wessenger:** Yes. A person who is employed by the federal government is not subject to income deduction at this time.

**Mr Sorbara:** Could the parliamentary assistant tell us why?

**Mr Wessenger:** Because of the constitutional problems. It would require the agreement of the federal government to permit this legislation to apply.

**Mr Sorbara:** Could he tell us whether or not the Allaire report solves that? Or do you prefer not to comment?

**Mr Wessenger:** The Allaire report does not solve anything.

**Mr Sorbara:** Sure it does. It solves it. It puts all this stuff in the hands of the province. That is why Quebec wants to do it. But that is not—

**The Chair:** Was that not a report to the Quebec Liberal Party?

**Mr Sorbara:** Yes, it is, and it may change the very country that you are trying to help govern, Mr Chairman. I say to my friend the new member for Sudbury, formerly the constituency assistant to the member for Sudbury East, now a welcome addition to the Legislature in the province of Ontario—

**Mrs Cunningham:** You mean it, don't you?

**Mr Sorbara:** I am glad she is here. I would have preferred Sterling Campbell to have been elected. You want to know the truth? But nevertheless we are glad to have her here and she is going to contribute. The government should have said, "By the way, we've got a terrible problem when we present this thing, because all those people in Ontario who work for the federal government are not going to be subject to the act."

**Mr Wessenger:** But as stated, there is federal legislation that currently allows attachment of federal funds in accordance with provincial garnishment law, so we can garnish—

**Mr Sorbara:** Provincial garnishment law.

**Mr Wessenger:** That is right.

**Mr Sorbara:** That is right. Why did you not defer the introduction of this bill until you had worked out the details with the federal government, or why did you not tell us? We have to ferret it out. See how difficult it is to be in opposition, Mr Chairman? We have to ferret it out that if you work for Revenue Canada, if you work for the federal ministry of the environment, if you work for the Depart-

ment of National Health and Welfare, the post office, all those others out there, the CBC, Radio-Canada, n'est-ce pas—

**Mr Kwinter:** The military.

**Mr Sorbara:** Or the military. Oh, my friend the member for Wilson Heights mentions the military. Who is the largest employer in the province of Ontario?

**Ms S. Murdock:** The province of Ontario.

**Mr Sorbara:** Who is the second-largest in the province? Le gouvernement du Canada, je suppose. So, big deal, from the Ministry of the Attorney General a new bill to automatically attach wages of employers, but the second-largest employer in the province of Ontario is out of the act. Why did we not hear about this? That is why this section is so important, because "income source" says, remember, who gets caught in the net and who does not.

The federal government is out. Yes, garnishment is okay, that is, if you go through the old route of garnishment; so the bureaucrats will say, "Yes, but," and I am quoting here, "in the case of payors who worked for the federal government," and now I am paraphrasing, "other enforcement mechanisms such as default and seizure and sale proceedings are more suitable or, in this case, are the only ones available." Will the parliamentary assistant now tell us who else is outside the act and what stage we have got to in terms of getting the federal government into the act? Who else is included in clause 1(3)(f)? Those people who have types of income described in the regulations. Are you sure you have got the right words there, "income of a type," is that right? Will the federal government come in there? It is not a different type of income; it is income from a different source, currently excluded. Maybe the regulation power is not exactly the one you need. You had better check on that one again. Did you tell legislative counsel that you want to bring the federal government in on that regulation?

**The Chair:** You have six questions and three directives at the moment to the parliamentary assistant.

**Mr Sorbara:** I have got lots and lots of questions on this section.

**The Chair:** Would you like to hear his answer or shall we proceed?

**Mr Sorbara:** Not quite yet.

**Mr Wessenger:** I am sure I will not remember them all.

**The Chair:** The committee, of course, wants to have a thorough response to all of your questions.

**Mr Sorbara:** That is right, but I want to make sure that all my questions are on the table. I want the parliamentary assistant to describe for me, with the assistance of both the new director of the branch and the policy advisers, how SCOE is technically going to manage the affairs of the following hypothetical employee who has a support order registered against him:

An employee currently works for Radio-Canada, CBC, in Toronto. He did not get the axe when many of his colleagues got the axe, the 1,100. He then goes to work for a real estate firm that pays a commission but the commission is not

a periodic payment made at a regular interval. Whenever he sells a house or rents a factory, he gets a commission. Then that individual does not do very well in the real estate business so he takes a job selling hamburgers at a local McDonald's restaurant at the minimum wage.

Just to build on the example, he has an order for \$500 per month against him. He wins the lottery and is the beneficiary of a small prize, \$50,000, during the six months that he works at McDonald's, and then quits his job at McDonald's and is for a period of time unemployed because he is the beneficiary of this \$50,000 Wintario prize. After that, unbeknownst to anyone, he spent all the money, drank it all, probably, and then went up north and began to work as an independent contractor working in the bush for a logging company. In his fourth month there, he brings down a tree but he gets clipped with the butt of the tree and he breaks his leg, serious accident, and is on workers' compensation. Can you tell us how SCOE is going to handle that man's case, how it is going to keep the support order in force during that time? If you want we can defer consideration of this section for a while if you want the staff to work on that over night, and we can take it up tomorrow.

1600

My friends on the other side are grimacing a little bit, but that is important to us because we want to know how this bill is going to work. I have tried in my example to put forward as many income sources as I could to make sure that our friends in the branch have got their act together and are going to be able to handle this sort of situation.

The reason why I do that is because that is actually the way in which people live their lives, believe it or not, in this province. They move from job to job regularly. They get laid off. They quit. They win prizes. They go on long holidays. They have children whom they are supposed to continue to support. They go up north. They get hurt. They go on unemployment insurance. Oh, I did not include unemployment insurance in there. I want to, so add that to the example. Let's say that he is hurt for a year and a half, then he goes back to work and works for the government of Ontario but then gets laid off because of budget cuts by the Treasurer, the honourable Floyd Laughren, and goes on unemployment insurance. That is the example. Take us through it.

**Mr Wessenger:** Okay. If you would like, I will take it through. I may need the assistance of staff as I am going through in case I miss something here.

As far as the Radio-Canada situation, he is a federal employee, so he is subject to the federal garnishment legislation, so we could issue a garnishment order against him.

**Mr Sorbara:** Okay, let's take it back a step. We are assuming that at this point this bill has passed so there is an order for automatic deduction made by the court. Is that right?

**Mr Wessenger:** Yes, that is right.

**Mr Sorbara:** Has it been served on the CBC but are they told to ignore it?

**Mr Wessenger:** It would not be served on the CBC. It obviously would not apply as of yet, unless by that time we will have either—

**Mr Sorbara:** No, we do not have the regulations made yet.

**Mr Wessenger:** It would apply if we had the agreement of the federal government. Now, there are two possible ways. There may have to be federal legislation to allow us to have support deductions, or it is possible we may be able to amend the existing act to apply to federal institutions. We are having discussions with the federal Minister of Justice with respect to this matter. If they agree that we can do it, then we will do it by amending the bill. We could even do it in this committee before we finish the sittings, if we have that agreement in time before the legislation is final.

**Mr Sorbara:** No, I am assuming that the legislation is passed as it stands now and that there have been no regulations made yet.

**Mr Wessenger:** In which case the garnishee is the process we would have to go against Radio-Canada.

**Mr Sorbara:** There is default. As a practical matter—and by the way, I do not mind if staff or policy advisers just chirp in here—

**The Chair:** Mr Sorbara, we have a lengthy series of employment changes with many permutations. Perhaps if the parliamentary assistant could go over that fine example, as you wish, case by case, without any further interruption.

**Mr Sorbara:** Mr Chairman, with all due respect to your capable management of the Chair, clause-by-clause consideration of a bill is to permit this very kind of back and forth, question and answer analysis. It is called clause-by-clause and—

**The Chair:** We are not talking about clause-by-clause of the example, though, sir, but rather of the bill.

**Mr Sorbara:** I expect other members to be able to chirp in. Because what we do here is get a sense of how the thing really works.

**The Chair:** We can get that if Mr Wessenger is allowed to—

**Mr Sorbara:** But if I am not allowed to ask additional questions, there may be some holes in my understanding.

**Mr Wessenger:** I quite understand. I would be happy to try to assist Mr Sorbara or my staff would. The next aspect is the whole question of the real estate as a commission.

**Mr Sorbara:** Can we just stick with the CBC for a second? I understand then that—

**Mr Wessenger:** Once the garnishee is in effect—

**Mr Sorbara:** No, no, just step back. After the hearing where a support order is made, automatically a form will be filled out, an automatic deduction order—

**Mr Wessenger:** That is correct.

**Mr Sorbara:** Notwithstanding that the debtor—whoops, I am sorry—the payor is working for the CBC, that order will be made. The automatic deduction will be made.

**Mr Wessenger:** Yes, that order will be made.



**Mr Sorbara:** Is that correct? Agreed? Does everyone agree?

**Ms Feldman:** There will be an indication that it is inoperable at the time.

**Mr Sorbara:** Who will make that indication?

**Ms Feldman:** The format to be drafted would have, I imagine, an area as to whether an income source has been identified in accordance with the definition. If an income source has not been identified then the support deduction order is made but is inoperable. The beauty of it, though, is that if, as in your example with McDonald's, there is an income source subsequently located and the information comes to the program's attention, rather than having to return to court there can be an administration of that support deduction immediately and efficiently by the program. They have already got the order in hand. Now they have an identified income source. It can go out in the McDonald's example, that portion of your example that you gave to the committee.

**Mr Sorbara:** Just let's go back, though, to the CBC. There is nothing in this act that would indicate, even to, let's say, a lawyer practising for the first couple of years in family law, that the CBC was not an income source under the act. Is the form going to set out that this form is inoperable if an employer is a federal agency? Who knows? How is the decision made? How are we going to stop these support orders from inadvertently getting to Radio-Canada?

**Ms Feldman:** It is a program that will serve the notice of the support deduction order on any income source specified. If an income source was improperly identified, if a federal employer before an agreement with the federal Department of Justice was reached was identified, then it would not be practical to serve a support deduction order notice on that particular employer, because constitutionally at the present time it simply cannot be done.

**Mr Sorbara:** So we are going to rely on the administration at SCOE to make those determinations.

**Ms Feldman:** I think the government would like to think that the education that is going to precede the proclamation of this piece of legislation will assist in allowing judges and lawyers to identify what is an income source under the act, ie, federal versus provincial employers. Otherwise, I think the definition speaks for itself, periodically being—

**Mr Sorbara:** I think the director has something to say about that.

**Mrs E. Mills:** In this situation where there is not an income source that has been identified to fall within the definition, you must go back and remember the other sections in the act where the onus is on the payor to make the payments directly to the program if the deduction part of it is not workable. We do have to re-emphasize that and the lawyers will have to re-emphasize that with their client, where the support deduction is not workable.

**Mr Kwinter:** I just want to comment that the whole purpose of this amendment to the bill is to deal with those people. Right now the onus is on them and they are not living up to their onus. That is why we are doing this. So

to say, "Well, don't forget, they always have this onus," if we take that particular position, we do not have to bring in these amendments.

**Mrs E. Mills:** I think that there are some who pay and there are a great deal who do not pay, and we are trying to get at it, as you suggest, with this bill, but in these cases it will have to be further emphasized. We will have some who will comply and some who will not and then we will immediately move in to the other measures that we already have the power to take, which the lawyers have identified around garnishment.

**Mr Kwinter:** Mr Chairman, if I may, can I just add to Mr Sorbara's example, in one other situation where the man is employed by a company whose head office is either in Quebec, Alberta or any other province in Canada and is being paid from that province, and how that impacts?

**Mr Sorbara:** That is the final job that he gets, let's say.

Okay, so we are at Radio-Canada right now; he has the job. The order is made. What happens in the court process then? There is an automatic deduction order filled out, right? Radio-Canada is identified as the employer. Does anyone advise either of the spouses that this is not enforceable at this time or do they have to rely on counsel to do that?

**Mrs E. Mills:** Oh, it is enforceable. The support order is enforceable.

**Mr Sorbara:** No, I am talking about the automatic deduction order. Who tells them, "Whoops, don't rely on this"? We have to fill this out.

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**Mrs E. Mills:** From my perspective, until some of these fine details of the bill are final, we cannot have the program work through the actual procedure. Some of these certain steps, some of the major ones are in the act. The other ones are really the final implementation planning of how this will actually be administered and until some of this is final—

**Mr Sorbara:** You are saying to me that on the simple form that we are going to have, there is going to have to be quite a little bit of detail saying, "Please note, if it is a federal employer in the following category, this is not enforceable," etc., etc. Is that going to be detail on the back of the form in both official languages or what?

**Mrs E. Mills:** No, I am saying that, in the situation regarding the Radio-Canada employee, where it has been determined that the support deduction order is not enforceable at this point, assuming we have not been able to finalize negotiations with the federal government, there is a clause where it is determined that it is not practical to use the deduction order. The procedures around notification, who and how, have not been finally worked out, and that is part of what I call the detailed implementation planning.

**Mr Sorbara:** Some of those questions are pretty important. In any event, we have got an automatic deduction order filled out. It comes to the office and in the absence of anything else, somebody at the office says, "Oh my God,

this is one of those kooky Radio-Canada employees. We cannot enforce it, I guess." Is that right?

**Mr Wessenger:** They would have to make that decision that it was unenforceable at the enforcement branch, obviously.

**Mr Sorbara:** Right throughout the example, we have got a person who is a defaulter. That is different to a debtor, this is a debtor who does not pay his obligations, so we have got a defaulter. What would happen in the office now?

**Mr Wessenger:** When default occurs.

**Mr Sorbara:** Four months have gone by, they thought that it was going to be automatically deducted. They did not realize the Constitution of Canada stupidly prohibits such a deduction, and they went away from the courts thinking, "Oh well, it is all looked after." He is mad as hell but he thinks the money is going to be deducted. So four months go by, no cheques have flowed, someone in the office said, "Oops, we cannot enforce this." What happens?

**Mrs E. Mills:** First of all, I would rather be positive and hope that we will be able to get this worked out with the federal government before the bill goes in. Assuming it has not, first of all, the payor knows that he has not had anything deducted from his paycheque and the computer system will know that he has not sent us a payment, that we have not received a payment. So now you are into the normal stream of enforcement procedures, and the first thing is he will get a warning letter. There is a set period of time that he has to respond to that, and then we will work through the various procedures.

**Mr Sorbara:** But that is the very system—

**Mrs E. Mills:** That is the system that exists at the moment.

**Mr Sorbara:** Right, which is so bogged down and which people find so difficult and we get so many questions about in our constituencies now.

**Mrs E. Mills:** We are assuming, with some of the initiatives to deal with the backlog, we will be in better shape; and we are assuming, with the deduction order in place, a lot of those will be running smoothly and those which are difficult we will be able to spend the time on, and not actually spend any time—

**Mr Sorbara:** I have got a few questions on the warning letter. The Attorney General said that he wants to change the dynamics, make people feel good and comfortable and upstanding about this. Others have said to us, both here and in our constituency office, "You should see the way they talk to me and the tone of their warning letters." Is this going to change as well? Are people going to be coddled when they default?

**Mrs E. Mills:** Let me say first of all, yes. You mentioned I am the new director and I am, and we will be looking at the whole program. The way I like to phrase it is that we are going to be looking at everything and putting it through the sieve of what I call "customer service." Whether that happens to be on forms; whether that happens to be how we deal with staff across the counter; whether we have rules that are more a matter of privacy

when they come in to talk about their affairs, that will not happen overnight. But, yes, I intend to look at all those. Just as using "debtors" is a stronger term, and that perhaps is the term that should be used, maybe "warning letter" is the term, as it is a warning letter, but we will still look at it and see how it is phrased. It does serve a purpose, to put them on notice that he or she has not submitted the payment and certain other remedies begin if we do not hear within a certain period of time. We cannot change the facts.

**Mr Sorbara:** You see, this is an important point, because all governments, not just this new government, send out a variety of messages, and sometimes those messages clash. I once was responsible for the Workers' Compensation Board. They, and we, did a lot of advertising about the new board, the new look in workers' compensation: "Come talk to us, we have new systems and it is going to be all right." The reality of what happened sometimes as between injured worker and board, is just shocking. When you still use terms like "warning letter" and "threatening," they get even madder because they say, "You have just spent all this money advertising, and they called me up and they threatened to sell my house if I did not pay within 10 days," I am just saying—

**Mrs E. Mills:** That is why "payor" is so important.

**Mr Sorbara:** Let me tell you something, it is not going to change life when you just change the use of words like that.

Okay, so you have begun garnishment proceedings at the CBC. So you are going to court, right?

**Ms Feldman:** No, not necessarily. It depends. If the payor files a dispute to that garnishment or if Radio-Canada files a dispute for whatever reason to that garnishment, then a court hearing date will be set. If there is validity to that dispute, then the director can withdraw the garnishment, but that is a whole other issue and I am hoping that we do not have to get into that.

**Mr Sorbara:** No, we do not have to do that.

**Ms Feldman:** So there may be a court date or there may not. To obtain the garnishment, a request for garnishment is sworn in, the notice of garnishment drafted up and sent to the court, and the court issues it.

**Mr Sorbara:** How long does that take?

**Ms Feldman:** I am not sure now how long it takes, but I assume it probably varies from region to region. About a year ago it took roughly 10 days to do it up, send it off, get it returned and then get it out to the employer, but that is—

**Mr Sorbara:** But not 10 days of work. It is just filling out a form.

**Ms Feldman:** Ten working days.

**Mr Sorbara:** Ten working days before it is done.

**Ms Feldman:** It depends. At any particular time it depends on the workload at the regional office and the workload at the court office to get things issued and returned and then sent out.



**Mr Sorbara:** I am sorry to interrupt you, but you very quickly went over the steps and I think the steps are important. The office decides that there is going to be a garnishment. What happens?

**Ms Feldman:** The file is reviewed; the arrears and the statement of arrears would have been checked in most cases. The request for garnishment, which is a form, would be completed.

**Mr Sorbara:** It is a form. Fill out a form, okay, first step.

**Ms Feldman:** The more important point, incidentally, preceding all this is that the income source is known. In garnishment, it would have to be traced in most—

**Mr Sorbara:** In this example, everyone knows that Radio-Canada—

**Ms Feldman:** But if we are trying to compare, for instance, garnishments and the efficiency of garnishments with the court deductions, one of the very important points is that with garnishments, the information has to come to the program or the program has to be proactive and seek it out. With income sources, particularly the duty-to-inform provision, that information is given to the program which is one of the main advantages.

The request for garnishment is filled out and a notice of garnishment form is completed for the court's review and signature. At that point, it goes to the family court. I do not know exactly what happens in the family court.

**Mr Sorbara:** What happens in the family court, correct me if I am wrong if there is a lawyer here, it goes to a judge in chambers and he signs it.

**Ms Feldman:** Not necessarily, not in Toronto. In Toronto a clerk would sign.

**Mr Sorbara:** Somebody signs it.

**Ms Feldman:** Copies are taken, I assume, for the court files because they are often there when we do go to court and it comes back to SCOE.

**Mr Sorbara:** And?

**Ms Feldman:** The request for garnishment and the notice of garnishment are sent out to the payor—

**Mr Sorbara:** Which is the debtor.

**Ms Feldman:** —an affidavit of service completed and the notice of garnishment standing alone is sent out to the garnishee and an affidavit of service completed.

**Mr Sorbara:** That is the employer in our example, Radio-Canada.

**Ms Feldman:** Then the file would be brought forward, I do not know for what length of time, but to see whether payments are forthcoming. Actually there is a garnishment clerk at each family court who would, at first instance, monitor that particular court file for the payments that are coming in; and if payments are not coming in, then the provincial court rules indicate that there is a court hearing date set as to why the payments are not forthcoming.

**Mr Sorbara:** Are the same rules going to apply on an automatic order for deduction?

**Ms Feldman:** There are similarities. Because a support deduction order is made in the court at first instance,

there is some necessary modification, but there has been some thought given to similarities between garnishment and support deductions.

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**Mr Sorbara:** Okay, so you are into that process and a couple of payments are deducted and then what happened to our guy?

**Mr Mills:** He won the lottery.

**Mr Sorbara:** No, no, he did not. He got laid off.

**Mr Kwinter:** He got laid off and he went into the real estate business.

**Mr Sorbara:** He got laid off and went into the real estate business. What happens?

**Mr Wessinger:** Just to give a break, we will shift back and forth. At that stage, you could either serve a garnishee on the real estate broker—

**Mr Sorbara:** How do you know that he has been laid off?

**Mr Wessinger:** You would have a default hearing, first of all, to find out what he is doing, so the default hearing would determine what assets he had, who his employer was. Once that was determined, you could then—

**Ms Feldman:** You know he is laid off because the moneys would stop coming in from Radio-Canada. So you would make an inquiry, or the program would try to make an inquiry, as to why money had stopped flowing at that point in time.

**Mr Sorbara:** Okay. All of that takes time.

**Ms Fletcher:** The problem, though, and this is one of the problems with the person who changes employment frequently—how would we know where he is at, or where she is at, after that?

**Mr Sorbara:** That is right.

**Ms Feldman:** That is where, either under the new legislation—we are assuming the new bill is proclaimed—we have the ability outside of a court proceeding now to request financial statements to be completed under, I think, section 3j of the present bill. That will be very useful in these types of situations where there is a hop-about person and to assist with trace-and-locate functions. So we would not necessarily have to use court resources or legal resources to start the default hearings process.

**Mr Sorbara:** But in any event, you track the guy down.

**Ms Feldman:** Right.

**Mr Sorbara:** He is working for a Remax agency and what happens in respect of the automatic deduction order?

**Ms Feldman:** With respect to the automatic deduction order, still with the definition of "income source," as it stands now, assuming as in most cases that the commissions are irregularly paid, it still would not capture automatic deduction vis-à-vis the real estate commission.

**Mr Sorbara:** So commission salespeople are now out. Note that—

**Ms Feldman:** For commission salespeople, there are other means of enforcement that are more appropriate; and

more time can be spent because automatic deduction is on the regular payment.

**Mr Sorbara:** I am sorry to have to do this, but the government did not come out and do this. We now find that government of Canada employees, now out; commission salespeople, now out, because it is not a regular payment, it is not a periodic payment at regular intervals. Okay, so under this circumstance—and by the way, a lot of these guys work like this, hopping around, a lot of enforcement problems. Please get yourself more money from the Attorney General. They often work in situations where they do not qualify. Even though we thought the net was huge, now we are finding major holes in the net. Government of Canada employees, commission salespeople; okay, now what happens?

**Ms Feldman:** With the real estate situation, then there would be perhaps the financial statement, perhaps seizure and sale. The commissions do make their way into bank accounts. Garnishments last six years, so a lump sum garnishment to a bank can have a long effect. The problem is that once the payer is served with that garnishment, then they might withdraw the funds.

**Mr Sorbara:** I appreciate all of that, but you are describing now to me mechanisms that already exist under the bill and that would already apply to this fellow. What we are trying to do is consider the clause-by-clause impact of this new bill and how it will change things. You know where I am coming from. I have to make the case that this net is not as big as we thought it was, and here we have commission salespeople who are not included and I understand why.

**Ms Feldman:** The converse of that is that if the payments were irregular and support deductible, whereas the majority of support orders themselves are monthly or more frequent, then you are always playing catch-up on a particular file. You are always without knowing when moneys are going to be paid, when it is much more appropriate to proceed by way of default hearings or seizure or an outstanding garnishment. You are always trying to make support deduction work. We feel that it is a wonderful mechanism if there is some sort of complement between the periodicity of the support order being enforced and the income source payments being made, because it frees up the program's time to do the alternate enforcement with respect to your very hard situation that does happen sometimes, although not quite to the tone of the example given, the hop-about person and self-employed individuals and people who have contracting arrangements, etc. After the real estate, he worked at McDonald's and at that stage, support deduction does apply.

**Mr Sorbara:** How did you find out that he is working at McDonald's?

**Ms Feldman:** I cannot say how we found out, I really cannot. I would say it probably was with trace-and-locate.

**Mr Sorbara:** Suffice it to say that he might be working at McDonald's for four or five months before you even know that he is there, realistically?

**Ms Feldman:** Yes, and maybe after four to five months, if it was found out at that stage that a default hearing was an appropriate method chosen by the program to be practical to enforce, then it would be very hard for any court to find that he had valid reasons to pay nothing during the course of that employment.

**Mr Sorbara:** But I have a problem. He is working at McDonald's. You found that out because finally his wife saw him behind the counter at McDonald's and she phoned you and said, "That SOB is working at McDonald's," okay?

**Ms Feldman:** Yes.

**Mr Sorbara:** Now, you have an automatic deduction order that has him working at Radio-Canada. Are you authorized under this act to scratch out "Radio-Canada" and write in "McDonald's"?

**Ms Feldman:** Yes.

**Mr Sorbara:** You can do that of your own accord?

**Ms Feldman:** New notices can be sent to any income source that comes to the director's attention.

**Mr Sorbara:** Do you have to verify that? What happens if her eyesight was bad and she just thought he was there? What do you do in order to make sure that you know that you have the right employee and the right guy? Do you send out an investigation team?

**Ms Feldman:** No, not necessarily.

**Mr Sorbara:** You do not?

**Ms Feldman:** No, the enforcement mechanism is taken and if the person, the garnishee and, in this case, the income source indicates that person is not working here, then they will advise.

**The Chair:** Have we left McDonald's now?

**Mr Sorbara:** No, we are not finished with McDonald's, we are still there. Now remember, we have a support order for \$500 per month and the fact is, at McDonald's you are making about \$300 per month. Well, let's say you are making \$550 per month. What happens?

**Ms Feldman:** The support deduction order and all enforcement takes its life from the support order, so this is a problem that goes well beyond Bill 17. If there has been a change in circumstances, then that person has to do what is necessary to get either an interim variation or a final variation on the terms of the support order.

**Mr Sorbara:** Who makes that determination? We have our fellow making \$550 a month at McDonald's and there is a support order—that is one of the documents in your office—for \$500 per month. You have just got word that he is working at McDonald's. You do not do much investigation, but you scribble it out. "Radio-Canada" is gone, "McDonald's" is in and you send it to McDonald's.

**Ms Feldman:** Under the act, the maximum payment that can be deducted is 50% of the net amount that an income source owes to a payor.

**Mr Sorbara:** That is 50% of the net amount that he is earning?

**Ms Feldman:** Right. So in your example there will be accrued arrears on a continual basis. There will be a shortfall



if that payor does nothing to vary. For instance, if he feels or she feels for some reason the variation is temporary and things will get better and times will change, so there is no reason to go to court for a variation, there will be a continual accrual of the shortfall between what we are getting if he does not voluntarily make the payments.

**Mr Sorbara:** But you do not know how much he is making. You just send out notice of an income deduction order for \$500 per month.

**Ms Feldman:** It is no different than garnishment now.

**Mr Sorbara:** No, but under this bill, with all due respect, it is different.

**Ms Feldman:** Garnishments and support deduction notices will both, I think, indicate the same thing, which is that the income source or garnishee is liable to pay the amount set out in the order or 50% of the net amount, whichever is less, unless there is an order to the contrary by the court for whatever reason.

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**Mr Sorbara:** There is a difficult little wrinkle here because the spouse, the beneficiary of the support order, has phoned you and said: "He's working at McDonald's. He's working at the McDonald's there on Yonge Street just south of Wellesley," but that is all she tells you. Now, you and I know and the other people in this room know that McDonald's are all franchises. Does your office go out and go down to that McDonald's and try and find out who the owner is and search title to that business and do a partnership search and all that stuff?

**Ms Feldman:** The office will do what is practical to enforce. What will happen as a matter of practice in my own experience is—for instance, Shoppers Drug Mart is a franchise operation as well. If they are named, without naming the subsidiary or the franchisee—

**Mr Sorbara:** It is an independent business.

**Ms Feldman:** —on the garnishment, we will hear about it quite quickly. I think most income sources or garnishees would go to great length to advise the director that the wrong entity—

**Mr Sorbara:** Oh, no. I am sure about that. There is no doubt about that. But this woman phones you and says, "I have found him. He's working at McDonald's on Yonge Street just south of Wellesley. I saw him in there and he's behind the counter and he's serving hamburgers. You should get that automatic deduction order working and get it out there." As a practical matter, does your office go out and do the investigation to search out the owner of that business, or do you say to her, "Ma'am, get yourself a lawyer and find out who owns that franchise, where the legal address of the business is, so that we can serve the support order"? How does that work?

**Ms Feldman:** I think it is very rare to ask a creditor to get her lawyer. Yes, we want any information that the creditor might have at any particular time. No, she is generally not sent out to seek out that information.

**Mr Sorbara:** Who does?

**Ms Feldman:** If it is practical at the particular moment, while that case is being dealt with, for the enforcement office or for somebody to grab lunch at Yonge and Wellesley at the McDonald's, then they might do so with a hidden agenda of looking up the licences on the wall. Yes, Personal Property Security Act searches are done and corporate searches are done from time to time, but the bottom line is, depending on that particular agent and the director's internal policy, that the director does what is practical to enforce.

It might be, in some instances, that the garnishment goes out and a response is awaited and there is another three-week delay before the income source comes back, or the garnishee has said, "I'm not the proper garnishee," and then some more investigation has to take place. It really depends on the case-by-case.

**Mr Sorbara:** The long and the short of it is, it could amount to quite a bit of detective work or at least legal work of the type that lawyers like the parliamentary assistant to the Attorney General and myself and others do. That is, some client brings you in a name. It is McDonald's. It is on Wellesley. You say, "Oh, well. That doesn't really help, but I'm going to have to search that out or I'm going to have to do some work to find out who 345678 Ontario Inc is," because that happens to be the business, and, "The shareholders, my God, who the hell are they?" But there is a lot of work to do there, is there not?

**Ms Feldman:** In that situation, yes.

**Mr Sorbara:** Yes. Before the automatic deduction order—just as if you were going to garnish, you would have to do that same sort of work.

**Ms Feldman:** In your situation where the support deduction was inoperable at the first instance, there is more work than if the support deduction was working at the first instance and then the duty to inform kicked in and that freed up all those cases and put them to the side. The government hopes that the program has that much more time to turn to the example that you gave us.

**Mr Sorbara:** Okay, what happened after McDonald's?

**Mr Mills:** He won the lottery.

**Mr Sorbara:** Oh yes. That is right. Gord is right. He won the lottery—\$50,000.

**Ms Feldman:** Again, it depends how the information comes to the program. As you said, he drank the money away. Whether he drank all of it away, part of it away, or—

**Mr Sorbara:** You would have an opportunity, would you not, to attach that money if it were in a bank account—

**Ms Feldman:** Sure.

**Mr Sorbara:** —if you went through the appropriate legal proceedings—particularly the arrears which had piled up now for a year?

**Ms Feldman:** Absolutely.

**Mr Sorbara:** Right. But there is no periodic source of income to attach to get money that is not in arrears.

**Ms Feldman:** Unless the lottery was paid out by way of annuity.

**Mr Sorbara:** We do not do that here. Some people do it if they win—

Interjection.

**Mr Sorbara:** Wintario does?

**Ms Feldman:** I do not know which lottery companies actually do pay by annuity, but I have seen advertisements indicating that there is an election to be made by people who win the lottery to have money paid out over the course of—

**Mr Sorbara:** Not in the province of Ontario, no. There are no lottery companies, anyway, in Ontario. It is just one big government running the whole show.

**Ms Feldman:** Although, if it is paid to the bank and it were invested and wherever it is invested pays out in the form of an annuity or a periodic payment, then that becomes the income source, wherever the money is being paid out.

**Mr Sorbara:** But in our example he won the lottery. He immediately quits his job at McDonald's. Now, McDonald's has to advise you that he no longer works there, is that right?

**Ms Feldman:** And so does the payor, too.

**Mr Sorbara:** But the payor is a defaulter and not likely to do that.

**The Chair:** There is a necessary assumption that the payor is a defaulter, is that right?

**Mr Sorbara:** Yes, that is part of the story.

**Mr Kwinter:** If you did not have the garnishing you would not have any hope of getting it anyway.

**Mr Sorbara:** With the money in the bank you can attach for arrears but you cannot use an automatic deduction order to get at that money at the bank periodically.

**Ms Feldman:** Unless it is paid out somehow on a periodic basis, no.

**Mr Sorbara:** Okay. We have him now going up to the bush and working as an independent contractor cutting down trees. Can he be attached with an automatic deduction order here?

**Ms Feldman:** Probably not. It really depends how he set up his independent contracting business. But practically, if he is defaulting, then he will not become the income source for himself.

**Mr Sorbara:** That is right. So—and I tell my friends on the committee—there are increasingly individuals who set themselves up as independent contractors because they do not want this headache and that headache, and government is coming down so hard on employers in all sorts of ways. They set themselves up as independent contractors. Guess what? This net has another hole in it: independent contractors. You can just see this guy saying, "I'm going to get into a business where they are not going to get at my income, because I object to that," notwithstanding that he or she was slightly touched by that advertising campaign of the Attorney General.

**Ms Feldman:** But support deduction is not appropriate for that sort of situation, that kind of wilfulness where they actually manipulate or structure their income to not be in a position to be support-deducted. Default hearings are very appropriate mechanisms for those types of problems.

**Mr Sorbara:** The point that I was trying to make earlier is that there are a lot of cases where we should just leave people alone and let payments be made because they are good, honest and upstanding, and they believe that they have an obligation to continue supporting the spouse. For the others, we should have default payments.

So the independent contractor in the bush, that is a hole in this net, we agree. The worker—

**Mr Jamison:** He gets hurt.

Interjection.

**Mr Sorbara:** No, You did not agree. But our witness here agreed that an independent contractor is not caught here in this net. He is not an income source because you cannot be your own income source by the very definition. It takes two people.

**Ms Feldman:** I am sorry. I agreed that support deduction does not catch that. I did not agree that it is a hole in the net. My point is that it is not meant to catch that particular situation. Alternate and more appropriate enforcement mechanisms that can be done are meant to catch that situation and to free up the program's time in order to get at that situation.

**Mr Sorbara:** Well, that is another way of saying that there is a hole in this net of income source. I am just giving you situations in the real world, the way in which people actually work. Although, when you read this definition you think, "My God, they've just captured everyone," we found that the independent contractor, the commission salesperson and the federal employee are not yet caught.

Now our friend, this fellow, has an accident in the bush, seriously damages his leg and receives workers' compensation. What happens there?

**Ms Feldman:** I think some more thought would have to be given to that particular scenario, because while the government would intend that workers' compensation benefits be caught within support deduction, also, under the Workers' Compensation Act, section 50 provides for something called a diversion, which is very similar to a garnishment, and it has just been amended recently to provide for garnishment.

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**Mr Sorbara:** Bill 162. I was its author.

**Ms Feldman:** So I would have to give that more consideration.

**Mr Sorbara:** We would like to hear about that. By the way, Mr Chairman, can we just note that? We will want to hear about that and how, practically speaking, we are going to deal with the workers' compensation problem.

**The Chair:** As a point of clarification, if he was an independent contractor he would not be eligible for workers' compensation, would he?



**Mr Sorbara:** No, an independent contractor can make payments to the workers' compensation system and cover him/herself.

But we want to know whether SCOE does. Now in this committee a while back we talked about—you remember privacy and confidentiality? Guess what? The workers' compensation system has a data bank. Guess what? SCOE has a data bank. Are we going to allow these two computers to talk to one another and say, "Hey, I got one of your guys on my payroll?" Are we going to allow that?

**Ms Pilcow:** I missed that question.

**Mr Sorbara:** Oh, I am sorry. I will repeat it then. In this committee a while back, what was it we were talking about?

**Interjection:** Freedom of information.

**Mr Sorbara:** Freedom of information. Why were they here? Do you remember, Dianne? Lisa will tell us.

**Mr Mills:** We were talking about exchange of data and the new health cards.

**Mr Sorbara:** Yes, but what matter was before us? Lisa, can you help us out here? This committee was discussing freedom of information and the protection of privacy. I am sure it was a bill of some sort, was it not?

**The Chair:** That came up with the other—was it the legislative committee?

**Mr Mills:** I am sure it came up with the new health cards. The surgeon lady was asking about it—Margaret.

**Mr Sorbara:** Oh, I am terribly sorry. I was sitting in on another committee. My apologies both to the clerk and the Chair and to everyone else. It was the Municipal Freedom of Information and Protection of Privacy Act, that is what it was. When we heard submissions on the municipal freedom of information act and the review thereof—it is all coming back to me now. It is the standing committee on the Legislative Assembly and they are charged to periodically review the provincial freedom of information act and there were submissions made in that regard. The big issue there is protection of privacy.

**The Chair:** The clerk reminds me that our researcher, Ms Swift, did write a background memo on privacy and freedom of information in regard to Bill 17 which you have before you, so in regard to that particular aspect of the bill, feel free to consult that research paper.

**Mr Sorbara:** It was an excellent research paper and I complimented Ms Swift on it when she wrote it and I will again now for the record.

My point is this: Before that committee we heard concerns about the invasion of our privacy, and one of the issues that is going to be confronting government is this: We have all these data banks that have information about the personal lives of individuals in the province of Ontario. For example, we have a list of all the defaulters on student loans. That information is notionally available and theoretically available. There is a computer that has the names of all of the people who receive workers' compensation. Presumably, one day you guys will get a computer, will you not? Yes, get yourselves one, you need it badly. You will get a computer and all the names of people who are in

default or who owe under SCOE will be there on the computer. The big issue in privacy law is now whether governments are going to allow these computers literally to talk to one another and share information; so in our example there is no way for SCOE to automatically know that this guy who is an independent contractor, and is in default, has hurt himself and is now drawing workers' compensation benefits. But if the government allows these computers to talk to one another, SCOE will find out soon enough. Will you not?

**Mr Wessinger:** Could I just make a comment on the existing legislation? Subsection 6(1) says, "The director may, for the purposes of enforcing a support or custody order,

"(a) obtain from any person or public body information that is shown on a record in the person's or body's possession or control..."

So that indicates we have the power right now under the existing act.

**Mr Sorbara:** I say to my friend the parliamentary assistant to the Attorney General, that law is subject to the provisions of the Freedom of Information and Protection of Privacy Act and would have to not only go through that loophole but that act as well. I say to him as well that the New Democratic Party, as a matter of policy, has traditionally been a great defender of issues relating to privacy. They have also wanted all information to be available to the public, but it is not inconsistent. Protect people's privacy. I want to know from the people at SCOE, are you going to seek to have access one day to WCB computers to get information about how many of your defaulters are drawing benefits? Yes?

**Ms Feldman:** I would say yes, I would like to think of it.

**Mr Sorbara:** Will you agree at least to give some consideration to issues related to protection of privacy?

**Mr Wessinger:** It is really not in the context of this bill, because it is really in the context of the other legislation. If the other legislation overrides this legislation, then obviously this is—

**Mr Sorbara:** You will abide?

**Mr Wessinger:** That is right. That is correct. Obviously that is the case.

**Mr Sorbara:** Now, our guy here is drawing workers' compensation, but you are going to get back to us as to whether or not workers' compensation benefits come within an income source here. Is that right? Okay. So now there are three and a half holes in this net.

So he gets out of the bush. He is back on his feet. The leg is working all right. He is getting a permanent partial-disability pension; he is getting a little money from the federal government; he gets a job. Having gotten the job, he has worked for a few months, qualified for unemployment insurance, and now he is on unemployment insurance. That is another hole, is it not? Federal, difficult.

**Ms Feldman:** Right now that is something that is not support-deductible. It is under the Family Orders and Agreements Enforcement Assistance Act, a piece of federal

legislation, that garnishment can take place, and UICs are garnishable through that federal piece of legislation.

**Mr Sorbara:** In times of recession, lots of people are drawing unemployment insurance, and this definition of income source has a pretty big hole in it, would you not think?

Finally, he decides that he does not like unemployment insurance any more, gets a job, but his employer is an out-of-province employer. Although he works in the province of Ontario, the cheque comes from Winnipeg, Manitoba, the heart and soul of this great Canadian nation.

**Ms Feldman:** Support deduction is only available in the province. Perhaps one day it might be available in other provinces as well, but what we would be thinking of doing—and I am not sure if it is available in Quebec or which particular provinces it is available in—is issuing an extraprovincial garnishment, which is another mode of enforcement.

**Mr Sorbara:** Right. So if you work out of the province, it does not come within this income source. If you work in the province but the employer is out of province, it does not apply. You cannot send them out of the province.

**Ms Feldman:** I am not sure, really. If it is only the payroll office that is out of province, I am not sure of the answer to that particular question.

**Mr Sorbara:** Find that out. Mr Chairman, I am ready now to vote on the amendment.

**Mr Mills:** I have really been trying to be most attentive during this discussion, and I must admit that, from time to time, I must be getting a little bit older, but I drifted off to my childhood and Abbott and Costello, and I have got to wonder who is on first base at different times.

Nevertheless, I enjoyed a wonderful, charming fairy story about our friend who traversed to all kinds of different jobs. My question is more succinct. What I would like to know is: How far and how intense is the ministry along the way with its discussions with the federal government about putting this into place? I hear you say that possibly we are going to do this before we even get to the amendments. So it must be pretty close to some sort of agreement, and I would like to know how close that agreement is, and then we could dispense with the hypothetical problems that we have with the people who are in the military, who work for Radio-Canada, etc.

1650

**Mr Wessenger:** I am advised that we are awaiting a reply from a person in the Ministry of Justice. It is likely to be back this week, is it? Back on Monday of this coming—

**Mr Mills:** Would that then tell me that all the preliminary discussions are completed and it has come to a yes or no, or are we some time down the road?

**Mr Wessenger:** I think we are dealing at, shall we say, the bureaucratic level. The bureaucratic level has no problem and we can assume that the recommendation would go for the decision. That is all I think I can say at this stage. We do not know whether it is going to have to go beyond the bureaucratic level to the political level.

**Mr Mills:** In your political opinion, is it promising?

**Mr Wessenger:** I do not see why the federal government would have any objection to this type of approach. It ought to be in line with their philosophical, ideological positions.

**Mr Mills:** To vote on this amendment, I think it would help to know that it is promising.

**The Chair:** Okay, any further discussion on this point?

**Mr Sorbara:** I think we should congratulate, first of all, the parliamentary assistant to the Attorney General for taking us through the example. Just to note once again that it is a very comprehensive definition, but it leaves out a lot of people. If you go to the chart that I referred to earlier on in my remarks, and you see all those people that defaulted, so many of them lived lives like the one I described.

**Mr Fletcher:** That was my point. There are so many people like that.

**Mr Sorbara:** Well, I would defer to Mr Fletcher if he wants to comment on this thing for a few minutes.

**Mr Fletcher:** I was just wondering, what happens if this fellow goes skydiving and gets caught in the crosswind and has his bankroll on him and it blows across an international boundary. Do they still collect on that?

**The Chair:** Would you seriously like an answer to that particular question?

**Mr Fletcher:** No, thanks.

**Mr Wessenger:** I could not be serious with that.

**The Chair:** Any further discussion?

**Mr Sorbara:** Mr Chairman?

**The Chair:** I thought you had said that you were finished, Mr Sorbara?

**Mr Sorbara:** I said we might be ready to vote. Interjections.

**Mr Sorbara:** I am being harangued by the director of the support and custody enforcement branch of the Ministry of the Attorney General.

**The Chair:** Okay. Anything further? Any further discussion?

**Mr Sorbara:** I note for the record that my colleague, Mr Elston, is back, and he might want to say something additional on this thing, but we are really talking about this amendment, are we not?

**The Chair:** Yes, we were.

**Mr Sorbara:** The amendment to the definition of "income source." We had not yet got a resolution of the problem that Mr Elston raised, that Mr Kwinter raised, that Mrs Cunningham would have raised, had she been—

Interjection.

**Mr Sorbara:** We have been doing something else, actually. That is to say, should we or should we not leave the words "at regular intervals" in this; or should we or should we not put the words "at regular intervals" into this definition? I say no. I say the government members of this committee should simply rise up and say, "Murray Elston made a very good point." These periodic claimants should not have to be paid at regular intervals, and they should



just tell the government what to do. That is what you were elected to do. Had you been chosen to sit in cabinet, you would have been the government, but you were not chosen. So you are in the Legislature now, and we are legislators, so you can tell them how you want this bill. You cannot tell them that you are not going to have the bill, because you have already agreed in principle to support this thing, all three parties. So do it. I mean, actually take up courage and think about what Elston said and defeat this amendment. Let's keep the definition the way it is.

**The Chair:** Thank you, Mr Sorbara.

**Mr Sorbara:** No, I am not done yet.

**The Chair:** Oh, I am sorry.

**Mr Sorbara:** The reason why we should do that is because it makes this definition "income source" slightly more expansive. It does not fill all the holes that I identified—Sharon, you were not here, you missed it. But federal employees—

**Ms S. Murdock:** I will read it. You do not have to repeat it. I will read Hansard.

**Mr Sorbara:** Do you promise? Federal employees are not covered. Commission salespeople are not covered. Independent contractors are not covered. We do not know yet whether, if you are getting your money from the Workers' Compensation Board, you are covered. You are going to get back to us on that.

**Interjection:** No, it is irregular.

**Mr Sorbara:** Yes, and anything that is irregular is not covered, and that includes most of us much of the time. So there are some very significant holes in this definition. I say that as a committee we could flex a little bit of muscle and say to the government: "Look, you want to add in the words 'at regular intervals.' We have read—there it is right here on page 4—the purpose for the amendment. We think that is a nice rationale, but we do not agree with you. We agree with our Liberal colleague Mr Elston. So we are going to defeat that little amendment and we are going to do so on the basis that we have been elected by the people in our ridings and our constituencies to express somewhat independently our points of view on the laws that come before the Legislature."

So I know that my friend Mrs Cunningham and my friend Mr Carr agree with that position, at least I think they do. And I am hoping that at least one or two of the government members will agree with us. I do not have anything more to say, but it looks like Mrs Cunningham does so we might have to continue this debate tomorrow.

**Mrs Cunningham:** I do have a question and it is a very direct one. If in fact the words "at regular intervals" were left out—I hope I have got this right—would we then, given the example that we have listened to with care, be able to include independent employee or at least the commission salesperson? Would that assist us? We spent an hour going through examples of people who could be out because they are not paid at regular intervals.

**The Chair:** You underestimate Mr Sorbara. I think it was more than an hour.

**Mrs Cunningham:** Well, whatever it was, Mr Chairman, I think one of the problems in what we have ahead of us, which I shall speak to after you answer my question, is that there are examples that are useful. I think we went through one this afternoon and, admit it or not, a lot of us learned something from the example.

One thing I think I learned, and I may be wrong, is that if we do not have the words "at regular intervals" in there, then two of the examples that Mr Sorbara used were independent employees who then could be caught if we did not leave "at regular intervals" in—independent meaning self-employed—and commission salespersons because they are not always paid at regular intervals.

**Mr Sorbara:** That is right, they are paid periodically but they are not paid at regular intervals.

**Mrs Cunningham:** Which are two examples. With respect to what is happening here, we listened to some input from witnesses. We, in an effort—and I raised it right off the top—to answer the question, put in the words "at regular intervals". Now we have gone through what it really means, could we improve this legislation by getting to more people? Two examples we went through for the last two hours; I did not sit here for no reason. If we leave "at regular intervals" out—I want to know.

**Mr Wessinger:** First of all, the independent contractor or the commission salesperson, if they receive their payments on a regular basis they would be covered by this definition. What you are concerned about is the one that receives it, say, maybe once every three months, or like a real estate agent only receives it when they actually make a sale. Obviously, if you took out "at regular intervals" you would slightly widen the net and I think that is fair to say, you would slightly widen the net.

**Mr Sorbara:** Repair the net.

**Mr Wessinger:** Repair it. But the difficulty is, in widening that net you are then making it more difficult to administer because, when you have regular-interval payments, and when there is an interruption of that payment, then SCOE immediately knows there is default, the enforcing branch knows there is default and they can make the necessary inquiries and take the necessary steps. If you have this broader group included you would be making inquiries and taking steps in many instances where there was no default and that would greatly increase the workload of the branch. It would detract from the time they need to spend on their more difficult cases and you would not know—I will let staff add something here too.

1700

**Ms Pilcow:** One of the other difficulties is that while the income source is not remitting, the payor then has the obligation to remit and you would never know, if the payments were irregular, who was the one you were supposed to enforce against. If you get paid after three months and then the income source pays again after five, all of those intervening payments are to be made by the payor. How does the program know, then, who is not remitting at what time? Unless it is regular, it is not something that can be administered by support deductions. That is the very kind

of payment that you get by default hearings, by seizure and sale and by the other enforcement remedies.

**Ms S. Murdock:** Just on that point too, because it would be at regular intervals, the trigger then for notification to the branch that default has occurred would be—and then the other ones can be brought in through the regular court system. I see it as a trigger, sort of like a tickler system in your office that you need to send your bill out. Well, in this instance, they need to make a payment.

Interjection.

**The Chair:** Mr Kwinter first.

**Mr Kwinter:** I think the problem that we have is that we may be tackling the wrong problem. The parliamentary assistant said that it widens the net. It widens the net for those that are included; it also widens the net for those who can be excluded because you then have the ability—if it says regular payments—to structure it so that you can determine that it is irregular and as a result not be caught.

The other concern that I have is that the motivation of this particular section seems to be to make it easier for SCOE to function as opposed to making it easier to get more money for the people who want the money, which is what I thought the whole purpose of this bill is. That is a concern that I have, that they are saying: "Oh, my God, if we have to do this it is going to make it more difficult for us to administer." But that really is not the problem. The government has to decide whether they are going to provide the resources to make this efficient, but what they are really doing is saying: "Do not confuse us with the problems out there. We have our own problems and we have got to make this thing run in our office. We have to make sure that our offices are doing their workload and everything else, and it does not matter whether we are getting any money for these people or not." That is a concern that I have.

**Mrs Cunningham:** Just to go back to one of the statements that was made, that it is more difficult for the administration of the office, and I think that is what you just said. But you also said the reason that you are concerned about that, is that you want the people in the office, the administrators, to go after the more difficult—they want more time for the more difficult cases. Is that what you said?

**Mr Wessenger:** Which are more appropriately dealt with in a way other than support deductions. The feeling is that the irregular payment is better dealt with, for instance, by a garnishee function, or a default—

**Mr Sorbara:** Motion to adjourn, Mr Chair—

**Mr Elston:** On that point we heard lots of people testifying about the cost of going through the courts to enforce support orders—

**The Chair:** We have a motion to adjourn?

**Mr Sorbara:** After Mr Elston—

**The Chair:** You introduced the motion to adjourn. I do not think a discussion should occur after the motion is—

Interjections.

**The Chair:** Motion to adjourn. All in favour of the motion?

**Mr Mills:** Are we not going to deal with this issue after all this while it is fresh in our minds?

**Mr Wessenger:** We agreed that we would deal with this clause. If everybody agrees to deal with this clause today, then we adjourn.

Interjections.

**The Chair:** I believe we have to vote on the motion. All those in favour of the motion to adjourn? Opposed? Motion defeated. Mr Elston.

**Mr Elston:** Where was I when I was interrupted by all that—

**The Chair:** We do want to hear you, even more than your own colleagues.

**Mr Elston:** I think I was talking a little bit about the enforcement. I was in full flight and now I have been fully put off the whole thing, but I just wanted to repeat a couple of things that I had heard before and that I had raised.

**Mr Kwinter:** You were talking about administration.

**Mr Elston:** The administration? Okay, the administration. If we follow your logic on this amendment, which is that one of the reasons for the amendment is that it makes it easier to administer because you do not have to pursue people that make irregular payments and all that, and that you enforce the irregular payment under a garnishee, it becomes quite expensive to go back to court all the time and make these applications. I guess I was just saying, before I was cut off by the motion, that we heard a number of people making presentations to us, saying: "If we always have to go back to court and chase these people, it is not effective. It costs us money or it costs legal aid money and you do not get one cent more." You get default hearings in situations where the judge will not enforce an order to throw the person in jail for default of payment or making fines, for instance, if they are in contempt; and they are just saying that it was not an effective way of dealing with the issue.

What we have been saying up to this point is that we want to make it easier to do the enforcement and for SCOE to spend all the time that it can on the tough enforcement cases so that we end up not having to pay money in pursuit of people, but we end up getting the money from the person who owes the payment and giving it to the person who is a dependant, and to their children.

I just wanted to make it clear that as long as you are going to rely on that old system, you have not advanced the yardsticks one iota for those people who have difficulty in enforcing those orders. They will still be people in need. The children will still be children in need of assistance and you will not have moved one iota in favour of child-poverty elimination.

The more we talk in the terms that we have been talking about the need to take the pressure off SCOE to administer irregularities in the payment structures, the more I think you turn this bill into a bill of a nature that I described before, namely, one that will be managed and controlled by the well-to-do and one that will be catching the people who have little, if any, economic power.



Those people who have very little control over their economic lives will be subject, most often, to these amounts being taken off their paycheque, while people who have economic power will be able to manipulate the system in a way which I do not think you had wanted, Mr Parliamentary Assistant, nor did your caucus.

I am concerned that that is the result. I am concerned that, because this bill speaks more to ease of administration, you will be promoting the continuation of the status quo which was one of the things that the Attorney General said in his opening remarks he could not countenance. If that is what you are going to do, I guess that is what we will do. But for many people who are without economic power in this province, it is status quo and it will remain that way; and I am afraid that you have forced those people who could not get payments before to go back to the

expensive route of litigation and expensive costs of paying third parties when the money really is supposed to come to the person in need of support and his or her children.

**Mr Wessenger:** If I might comment, first of all, the important procedures is—

**The Chair:** Pardon me, Mr Wessenger. Is it with the unanimous consent of the committee that the discussions continue? No. The committee is then adjourned. The clerk reminds me that in the previous vote—with deference to Mr Elston who Mr Sorbara was wishing to allow to speak—Mr Sorbara reminded us that it was after 5 o'clock. We then have to adjourn until 10 o'clock, not having unanimous consent to continue.

The committee adjourned at 1710.

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## Official Report of Debates (Hansard)

Tuesday 26 February 1991

## Journal des débats (Hansard)

Le mardi 26 février 1991

### Standing committee on administration of justice

Child and Family Support  
Statute Law Amendment Act, 1990

### Comité permanent de l'administration de la justice

Loi de 1990 modifiant les lois  
relatives aux obligations  
alimentaires

Chair: Drummond White  
Clerk: Lisa Freedman

Président : Drummond White  
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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday 26 February 1991

The committee met at 1006 in committee room 2.

### CHILD AND FAMILY SUPPORT STATUTE LAW AMENDMENT ACT, 1990

### LOI DE 1990 MODIFIANT LES LOIS RELATIVES AUX OBLIGATIONS ALIMENTAIRES

Resuming consideration of Bill 17, An Act to amend the Law related to the Enforcement of Support and Custody Orders.

Reprise de l'étude du projet de loi 17, Loi portant modification des lois relatives à l'exécution d'ordonnances alimentaires et de garde d'enfants.

Section 1:

**The Chair:** We are dealing with clause-by-clause on Bill 17. Where we left off last evening was on the government amendment which is on page 3 of the copy which the clerk provided you.

Motion agreed to.

**The Chair:** Mr Wessenger moves that subsection 1(3) of the bill as printed be amended by adding the following as a definition in subsection 1(1) of the act:

"'Provisional order' means an order that has no effect until it is confirmed by another court and includes orders made under subsection 18(2) of the Divorce Act, 1985 (Canada), sections 3 and 7 of the Reciprocal Enforcement of Maintenance Orders Act, 1982 and section 44 of the Family Law Act, 1986."

**Mr Carr:** I just wanted to, if I could, get some of the rationale behind the particular amendment from the parliamentary assistant.

**The Chair:** Mr Carr, do you have the annotated—

**Mr Carr:** Yes, I have got it on the right-hand side and maybe he could just go through it with us.

**Mr Wessenger:** Okay, basically a provisional order, as I understand it, is not in effect until it is confirmed by another court, so this is to clarify that we are not enforcing orders that do not have legal effect. As we require either an interim order or a final order, we also need a provisional order that is confirmed. So in effect that agrees with the present situation that our courts do not enforce a provisional order until it is confirmed.

**Mr Carr:** And in the actual bill, what page is that on so I can just get the wording?

**Mr Wessenger:** It is subsection 1(3) and this is an additional definition, the definition of "provisional order."

**Mr Elston:** May I just have a bit of a clarification? I know you want to clarify the provisional order issue, but I do not quite understand why you are taking the pains to deal with this when you told us during the hearings that you would accept an agreement between the two parties that an order of the court should be amended without those

people having that amendment to the court order being approved by the courts. Can I understand what the practical effect of this decision is, particularly when, in some cases when provisional orders are made, it is often with the consent of the parties? It does not have to be, but it is often.

**Mr Wessenger:** No, a provisional order, for instance, in the most usual case would be one that is an order from another court, another jurisdiction, and it is provisional until it is confirmed by the Ontario court. So it is important. Under the present situation we would not enforce an order of, for instance, British Columbia, until it has been confirmed in Ontario. At that stage, once we have confirmed it, then the whole procedure will kick in. So it is to clarify the fact that we would not start enforcing an order from another court until it had actually been confirmed in Ontario.

**Mr Elston:** Okay, so it would have nothing to do with any kind of a voluntary situation necessarily.

**Mr Wessenger:** No, it is nothing to do with a voluntary situation. It has to do with an order made by another court. There could be, for instance, a dispute by Ontario residents with respect to the amount of arrears owing by the foreign, well, the out-of-province court order. So we want to protect—

**Mr Elston:** Foreign may have more correct application later on.

**Mr Wessenger:** It may have some more correct application later on, but we want to ensure that Ontario residents are protected. In other words, this is really for the protection of the payor, basically. This is to ensure that the payor is protected against—

**Mr Elston:** Not necessarily. It also has protections for whoever is situated in Ontario. The payee might very well be protected if the provisional order made some kind of an outrageous claim about the ability of another person to pay, for instance, on lack of evidence—

**Mr Wessenger:** That is right.

**Mr Elston:** —from the Ontario resident, for instance. Okay.

Motion agreed to.

**The Chair:** Mr Wessenger moves that section 1 of the bill as printed be amended by adding the following subsection:

"(4) Section 1 of the act is amended by adding the following subsection:

"(1a) An individual, a corporation or other entity does not cease to be an income source solely because of a temporary interruption in the periodic payments owed to a payor."



**Mr Elston:** When, then, is an income source going to cease to exist? When does the interruption become more than an interruption?

**Mr Wessenger:** When it is not a temporary interruption in the sense—

**Mr Elston:** What is temporary? If I am a construction worker, for instance, I may be on the site for two months and then I will fall out of the employ of that person and be assigned to another organization but I might very well be back in another month to work for the same organization. Is that temporary? When I go on assignment, when I go on a work list, I rotate among the employers and I might work for the same general contractor several times during the course of the year.

**Mr Wessenger:** Temporary. That would be temporary as—

**Mr Elston:** Then you end up having a whole series of employers having to make nil returns for an extended period of time. I do not understand that, because that is a whole series of different problems. If I happen to be a large construction contractor and I go through a work list of individuals on a union list, for instance, you are going to ask me to keep reporting on a guy who has fallen out of my work schedule—

**Mr Wessenger:** I think there would be a practical way it would be dealt with, like—

**Mr Elston:** Okay, what is it?

**Mr Wessenger:** —the employer would fill out normally a form for unemployment insurance. If he specified “layoff” on that then he would still cease in my opinion to be an income source. But if it is termination, then of course it would—

**Mr Elston:** That is not practical. When people go on construction lists they fall in and out of the work for a particular employer on a regular basis as the workforce is required. I may stop working for Monte but I may very well be assigned to another employer. I may end up with Mr Carr. And you are telling me that means, as an employer, Monte has got to keep reporting on me even though I am working with Mr Carr’s organization? That could be a wild series of reports, and it does not sound very practical to me. It really does not. That is the way organizations work, practically work. And you could end up having four different employers perhaps reporting on my whereabouts and making nil returns.

**Mr Wessenger:** I think the intention is to catch more the situation where it is a temporary interruption of—

**Mr Elston:** Listen, that is what the intention is, but I am telling you about an example that is not practical. I know what your intention is. But how can you ask people in that type of activity to keep reporting on a person who circulates through a list like that? I may work in several different locations for the same employer or a branch of his operation or whatever, but I may end up back at the same employer. I am not under contract solely to that employer.

**The Chair:** I believe Mr Wessenger is getting consultation on that very point, Mr Elston.

**Mr Elston:** Sure, that is fine.

**Mr Wessenger:** The obligation of the income source is to notify of an interruption. That is correct. That is the first obligation.

**Mr Elston:** I have no quarrel with that. That is right.

**Mr Wessenger:** And then the income source has an obligation to advise of resumption.

**Mr Elston:** That is true, but in this case—

**Mr Wessenger:** And during the period where there are no payments made there is no reporting requirement. It is only on the resumption of employment that there is the obligation again.

**Mr Elston:** How do you know when I resume? As soon as I come back into his employ? But you are going to make the employer carry the onus, the responsibility, for reporting when this person’s name comes back around on the work list. Once I am in there I am the obligation of that employer. He never ceases to be an income source then and his obligation will carry on for ever, even if I only come back perhaps in six months.

**Mr Wessenger:** This would obviously be a question of interpretation. I am not being the judge—

**Mr Elston:** I understand that—

**Mr Wessenger:** —but you are asking me to be a judge—

**Mr Elston:** You are the person who is responsible for laying down how this is going to work. I am asking practically, if once I am on Monte’s work list and he knows I am going to come back because I appear in his workforce regularly but not solely—

**Mr Wessenger:** But it would be obvious where you have a construction company that uses the same—

**Mr Elston:** It is not going to be obvious—

**Mr Wessenger:** No, let’s say that uses the same pool of labour, the same people basically, and calls them back, that is obviously a temporary interruption.

**Mr Elston:** But that is not how it always works, Paul. You have to understand that I go on a work list. If I am terminated at one site, I will go back on a list to be assigned to the next available position. I might be with Mr Carr, I might be with Mr Mills or I might come back to Mr Kwinter’s workforce. But it sounds like when you talk about an interruption that Mr Kwinter would be obligated to report me whenever I come back. The fact is that I might be back in two months; I might be back in a year. But for all he knows I could be back in two weeks if he had to do another recall of labour. In my view there have got to be better guidelines as to when you can say “Mr Kwinter can write Elston off as an obligation to report” on whether or not I come back. You just cannot keep him on as an income source for a couple of years. Maybe the amendment should have a time line on it. If I do not work again in Mr Kwinter’s operation for, what?—three months, or maybe six months, he could then cease having an obligation to report on my whereabouts or my status. Otherwise, you end up with a tremendous amount of paperwork that has to follow my activity. He has got to keep me on

active file. He in fact does the paperwork that is also being done in your office, in the office of SCOE.

**Mr Wessenger:** I think maybe I will ask for a five-minute adjournment so that we can discuss it with the legislative staff.

**Mr Elston:** Sure, that is fine.

**The Chair:** Recess, five minutes.

The committee recessed at 1021.

1029

**The Chair:** Mr Wessenger.

**Mr Wessenger:** Yes, I am going to suggest that this amendment be stood down with unanimous consent to be reconsidered after staff have had a chance to review—

**Interjection:** Agreed.

**Mr Wessenger:** Thank you.

**The Chair:** Does that have agreement? Yes? Thank you.

Agreed to.

Section 2:

**The Chair:** So we move on then to section 2 of the bill.

**Mr Sorbara:** Mr Chairman, there is a Liberal amendment, if I might just read it into the record. I move that section 2 of the bill be amended by adding the following subsection:

"Section 2 of the act is amended by adding the following subsection:

"(3a) In discharging his or her duties, the director shall provide information and service, as the circumstances may require, equally to payors and to persons entitled to receive payment under support orders, custody orders and support deduction orders."

**The Chair:** The clerk would like a clarification.

**Clerk of the Committee:** In the last line you read "and support deduction orders." You left "or support deduction orders."

**Mr Sorbara:** I am sorry, "or support deduction orders." My contacts are dirty this morning.

**The Chair:** Any discussion on this amendment, questions?

**Mr Wessenger:** I have some problems with this amendment because I think what we are trying to do is put in legislation, operating principles, and I do not think we should have operating principles in legislation because I think it would create all sorts of potential for future litigation. I am advised by the director of the branch that the policy now is to provide neutral information to both parties.

There are certain restrictions, of course, on what the director can provide because of confidentiality, and I feel that if we put this type of amendment in, you are raising the spectre of all sorts of litigation and attack in the courts against the agency and making the program less effective.

**Mr Sorbara:** Before the parliamentary assistant to the Attorney General comes to a final conclusion on what he thinks about this motion, I would just ask him to go back

to some of the concerns that we heard during the public hearings.

I am trying to increase a little score. I want him to be able to record that we listened to what we heard during the public hearings about the way in which this branch, soon to be called something other than SCOE, deals with people; and this is one of the things that we heard. I am sorry that my colleague Mr Elston had to leave. By the way, he is just doing voluntary service here. As you know, he does not sit on the committee, but he is very interested in this bill and as a result of what he knows, after years and years of trying to deal with these matters in his constituency office and after what we heard here during the public discussion, he has asked that this amendment be included.

What does it say? It says simply that you just treat people fairly and equally. I do not think that makes this act operational. I thought the New Democrats were the party of fairness and equality. That is what they billed themselves as during the campaign—Agenda for People, no longer operative, by the way, but that is okay. Even if you listened to the throne speech; all sorts of nice words about fairness and equality. Here is a section that just says, "Will you please, Madam Director or Mr Director, depending on who it is, just treat people fairly?" Do I get the sense that the New Democratic Party members on this committee are going to vote against equality of treatment and fairness of treatment in this matter? I should hope not. This, by the way, Gord, is one of those situations where government committee members are allowed to disagree with the parliamentary assistant and respond to what they heard from witnesses who testified to us during the public hearings.

Let's go over it again. "In discharging his or her duties, the director"—now remember that the director is the individual responsible for the administration—"shall provide information and service," that is what the director does, information and service, "as the circumstances may require, equally"—the operative word is equally—"to payors and to persons entitled to receive payment under support orders...."

I think this is a provision that would be operative in any event under the freedom of information act. If there is information about you personally, an individual payor—it should be debtor, but I will use payor—or a person entitled to receive payment, that information and that service should be available equally. To vote against this or to turn this down, I think would be a rather inappropriate response from the New Democratic Party and the government members to what they say they would like to do.

This is not just operational, as the parliamentary assistant suggested. This puts a duty upon the director to ensure that there is fairness between the parties. You cannot write nasty letters because you think it might be politically appropriate to do that. You have got to treat people fairly in this system. My goodness, if government is not about trying to establish fairness in arbitrating even among competing interests, what is it about? Equality. Just treat them equally, be fair to them. Listen to their case. If you are a debtor or a payor, you do not get the second-class treatment.

Now, unfortunately, many of the people entitled to support have been getting not only second- but third-class



treatment. That is because of how desperately under-resourced the branch is. But if there is a duty to treat people equally and fairly, that means you have got to give the debtor or payor the same opportunity to make his or her case before the director and the director's employees, obviously, as you do the person entitled to support. So is it so terribly difficult? Is equality such an unfamiliar principle that you are going to vote against it? No, I hope not. The parliamentary assistant said, "Oh my goodness, we can't have this, we'll be in court." So what? If someone wants to go before a judge and say, "I was treated unfairly," if that person loses the case, he has to pay the court costs. So it is not as if everyone who gets a nasty letter is going to go before the court and say, "I've been treated unfairly." It is just, treat them equally. It is not a bad idea. If you were the director and you were giving instructions to your administration and your employees, would you not want to say, "We want to treat all people fairly and equally here"? I think if you said anything else your ability to actually carry out your responsibilities would be suspect. What is wrong with putting it in the law? Mr Elston, when he suggests that we do this, is not speaking through his hat. He sat on these committees as an opposition member for a long time. He has been responsible for many years in the delivery of government programs. I do not think he is creating undue litigation. If there is undue litigation, maybe it is because SCOE is not treating people equally and maybe that is yet another good reason to put it in the law.

So I call upon the members of this committee to think about this again, and not just take your marching orders from the guys who operate behind the scenes. If you really want to let fresh air into this place, if you really want to be different from the 37 parliaments that preceded you, take a step now, vote for equality, for God's sake, and tell the parliamentary assistant that you are going to make up your own mind on this.

**Mr Carr:** I am going to disagree a little bit with the parliamentary assistant. I think part of the function of the government is to give direction, and notwithstanding the fact that we have a director who is sitting here who probably would do a great job, I think there needs to be some direction sent down from the government on certain issues, and I think this is one of them, where sometimes it is important to set direction and to talk about equality. So I think it is a very good amendment and I will be voting in favour of it.

1040

**Mrs Cunningham:** Just a question: What is the main objection to this?

**Mr Wessinger:** My main objection, personally, is that we have a situation now that people do not sue the government because of dissatisfaction with its service in any area. We have a mechanism for dealing with dissatisfaction with government service. We have the political process to deal with dissatisfaction with the bureaucracy. We also have the Ombudsman as a method of dealing with it.

What you are doing in this instance by putting in this type of provision is that you are creating a legal right, and

a legal right with respect to only one government department, not all government departments.

The criticism about the enforcement branch could apply to any department across government from time to time. When you listen in your constituency office, there are all sorts of government ministries that you get complaints about, sometimes justified, sometimes not justified.

To create the whole concept of a legal right against government, I think, is wrong. I think we have a political process to deal with government. I think we have the Ombudsman to deal with government. I also have a strong feeling, and this is a personal feeling, that we have a lot of problems created in our courts in our administration of justice, as it is now with the Charter of Rights and the additional costs imposed on us, taking money away from health services and social services. This is a further expansion of the whole question of individual rights, and that has a cost to the community.

I think we have gone as far as we should go in this whole question of individual rights, but perhaps with specific exceptions, but I do not want to see this whole right created to sue government because of failure of service. I think that belongs in the political realm and it belongs in the Ombudsman realm, which we have a way of investigating. I think maybe the director might also want to say something on this matter herself. So I will turn it over to her now.

**Mrs E. Mills:** I think it will be on a slightly different theme, but I would like to point out that the way the amendment is worded may create an expectation around the provision of information equally to two parties. What we are finding in the branch and in the program is that the rules under the freedom of information act put a great deal of restriction on what information can be given, say, to the recipient about the payor's affairs or to the payor about the recipient's affairs. We get into the realm of third-party interests. So I would only be concerned about the expectation that would be created by this wording around "equal" and talking about information.

Last, I would like to say, I go back to Mr Wessinger's very first comment, that I think this is a principle that directs how we do our business. It is an operating principle that I personally do not think should be in legislation. I think it is one that obviously I support and is in operation now.

**Mr Carr:** That is you as one director; another director might not.

**Mrs E. Mills:** I do not think another director would be recruited and pass the test if he or she did not agree to the principle of equality and fairness. So I do not think you are going to get another director in there. I think it exists at the moment. We can disagree about how well it is being implemented but I think it is there and I do not think it has to be said in legislation. I think it may need to be said in more public documents, whether it be our brochures or whatever, so that the perception is more upfront that we serve two clients, both payors and recipients. I personally do not think it needs to be in legislation.

**Mr Sorbara:** I cannot believe what the parliamentary assistant to the Attorney General said about "We have now had it up to here with additional rights for people in our society."

**Mr Wessenger:** I think it is a whole question of approach, Mr Sorbara. I happen to believe in the political approach.

**Mr Sorbara:** What he said is, "We've got the Charter of Rights and for God's sake, let's stop all this business of rights."

**Mr Wessenger:** I believe the political approach—

**The Chair:** Mr Sorbara has the floor.

**Mr Wessenger:** I believe the political process is preferable in this instance dealing with individual rights rather than the legal process.

**Mr Sorbara:** I cannot believe it. I hope that is not the policy of his government because it means they have turned from progressive reformists to reactionaries overnight in one election. I think, probably, when he reviews Hansard and when he discusses it with his Premier and with his minister, he is going to want to retract that and I will await that.

What is more troubling is that the parliamentary assistant to the Attorney General wanted to have it both ways. On the one hand he said, "This is an operating principle." In other words, it is administrative. It has to do with how we run the show. We should not put that in law. On the other hand, in the next paragraph he said, "This is a legal right, and my God, I've had it up to here with legal rights, the charter and all that stuff." It is either one or the other. It is not both.

I believe it establishes legal rights, and it will have an impact on the operation of the branch and that is a good thing. That is what we are elected to do.

The director suggested that we could do that in some other way. We can do that in some other way. We can just rely on the goodwill of the director. In the case of this director, it is apparent that we have that goodwill, but it is not a matter of saying, "Therefore, we ought not to put it in legislation."

The parliamentary assistant to the Attorney General says that we need not create any more legal rights for people, but the fact is, this bill does that very thing. It creates a legal right to have an automatic deduction order in favour of a person who is to receive support. If that is not a new legal right, I do not know what is. It is a massive incursion into the otherwise private relationship between employer and employee.

So to add to it this delicate little touch of saying, "Please treat people equally, in terms of provision of information, in terms of provision of service," you have a statutory obligation to treat them equally, is that so outrageous a new legal right as compared to what the substance of this bill is? Why, of course not. They do not want to do it because they are afraid that one or two people are going to call them to account. But as politicians, that is what we are here for. We are here to vest rights in our citizens so that they can call the administration of government to account.

Gord, you understand this, I think. This is not a big deal. You are not going to offend anyone.

**Mr Mills:** I understand it very well.

**Mr Sorbara:** Your friend Sutherland understands this. He is the up-and-comer. He is going to be in cabinet soon. He will want to be able to say, as a result of his time in cabinet, "I brought new legal rights to the people of my riding and to the people of this province and I'm proud of it."

Bill 208 was about new legal rights in workplace health and safety. That is what we are all about. That is what we do. We vest people with new legal rights. It is only the Treasurer who does the opposite. Today the Minister of Finance is going to have some new taxes or something. Treasurers do not usually do that, but all other ministers, particularly, my friends the attorney general of a province, the minister of justice—all we are asking for here is a little bit of justice.

A final point: The director erroneously referred to the Freedom of Information and Protection of Privacy Act. I think legislative counsel will confirm that the Freedom of Information and Protection of Privacy Act is superior legislation. That is, it applies in the absence of any specific clause that would oust it from legislation. So this provision of information is subject always, of course, to the Freedom of Information and Protection of Privacy Act. I hope legislative counsel is nodding affirmatively.

**Mr Revell:** Legislative counsel believes that position is correct but, without the Freedom of Information and Protection of Privacy Act in front of him, cannot confirm it.

**Mr Sorbara:** That was, I think, my understanding from the very beginning on the creation of that act. If someone from the New Democrats or any party wanted to move an amendment, saying specifically, "Subject to the Freedom of Information and Protection of Privacy Act, this amendment applies, this equality of service of information," we would not find that offensive.

But there you go. This is a new little legal right just to ensure that, as we create the powerful right to intervene in a workplace, in the private relationship between employer and employee, we just say that we want people to be treated fairly and equally. I do not think that is so offensive. I do not think the director is going to have seven sleepless nights a week because he or she is under this new statutory obligation to treat people fairly and equally.

I think you should support it.

**Mr Wessenger:** One aspect I think is a very high concern specifically, and that is the whole question of information and whether the director can refuse to provide the information under the privacy provisions of the other act. There is going to be the perception by payors that when they ask for information about addresses and so forth and they are refused they are not being treated equally. So certainly it is going to create that perception. Certainly it is very important that the branch preserve the confidentiality of the information it has about the recipient of the support in order to keep the integrity of the program.

**The Chair:** Shall we vote on the amendment?



**Mrs Mathysen:** Mr Chairman, I would like a 20-minute vote, please.

**The Chair:** You are asking for a 20-minute—

**Mrs Mathysen:** Twenty minutes for a vote, a recess for—

**The Chair:** A 20-minute recess.

**Mrs Mathysen:** Yes.

**The Chair:** Recessed until 11:10.

**Mrs Cunningham:** Wait a minute. I have got another committee that I want to get on to tomorrow and I would like to proceed. If you want to stand something down and get working on something else, as we did before, that is fine by me, but I have got work to do and I would like to move on. If you do not want to vote on this, then let's get on to the next one. Why do you need a recess?

**Mr Sorbara:** My friend asked for a 20-minute bell, not a recess. I think really what she is asking for is a 20-minute division bell. Is that what you are asking for?

**The Chair:** Yes, that is what she is asking for.

**Mrs Cunningham:** Okay, explain this to me. Is there a reason for this?

**Mr Carr:** They do not have the votes.

**Mrs Cunningham:** Oh come on. Let's vote. What is the problem? One, two, three, four, five, six; one, two, three, four, five. What is the problem?

**Mr Sorbara:** If you want to defeat equality, you can do it.

**The Chair:** One, two, three, four, five; one, two, three, four, five.

**Mr Sorbara:** Yes, and then the Chairman—

**Mrs Cunningham:** Why? You cannot vote?

**An hon member:** He will break the tie, this time. He does not want to do that.

**Mr Sorbara:** Oh, just run out and get yourselves some members, for God's sake. You have got a majority of 76 and 36, for God's sake.

**The Chair:** I understand that your request really is not debatable; however—

**Mrs Cunningham:** I object. I have to be here and you should make sure you are covered too. You have got a lot more people than we have.

**The Chair:** Would you like to withdraw the request, before—

**Mrs Cunningham:** I mean, let's face it.

**The Chair:** Your request is not debatable, Mrs Mathysen.

**Mrs Cunningham:** I understand. I just wanted to know why. Now I know why. I object.

**The Chair:** We will recess until 11:10.

The committee recessed at 1052.

1110

**The Chair:** All in favour of the amendment?

**Mr Sorbara:** Can we just wait a second?

**The Chair:** We are obligated to resume at 11:10. The clerk reminds me we do not have time for further discussion.

**Mr Sorbara:** Just on a point of order then, Mr Chair.

**The Chair:** We cannot have further discussion.

**Clerk of the Committee:** Except for a point of order.

**Mr Sorbara:** Yes, that is right. You can on a point of order, Mr Chairman.

**The Chair:** Go ahead, sir.

**Mr Sorbara:** My understanding was that there was a recess.

**The Chair:** There was, until 11:10. It is now completed.

**Mr Sorbara:** Just on that point of order, my understanding on a recess is that we actually recess and then we take up the issue of whether or not we are going to have a recorded vote or a 20-minute bell.

**The Chair:** There was clarification on that. It was a 20-minute bell.

**Mr Sorbara:** You called a recess, not a vote to take place in 20 minutes. The clerk will clear that up for us, because she understands these points.

**The Chair:** The clerk can address that issue. I believe it was a standing order 126 request.

**Clerk of the Committee:** What was requested was a standing order 126 request for up to 20 minutes to bring in the members for a vote, which means that the vote would then proceed at the end of the 20 minutes.

**The Chair:** Thank you. All in favour of the amendment—

**Mr Sorbara:** I am still on my point of order. You can rule on my point of order, Mr Chairman, at the appropriate time, but let me finish. My understanding was that notwithstanding that what was requested was what we refer to around here as a 20-minute bell, you took gavel in hand and banged it and ordered a 20-minute recess. So are we about to have a 20-minute bell now, or what?

**The Chair:** No, I believe we are about to vote. I apologize, as Chair, for having referred to it as a recess rather than a 20-minute bell, but certainly that was what was requested.

**Mr Sorbara:** Okay.

Motion negated.

Section 2 agreed to.

Section 3:

**The Chair:** Is there any discussion, questions or amendments to section 3 of the bill? Mr Sorbara.

**Mr Sorbara:** Yes, there is, Mr Chairman. I am wondering if I could just call upon my colleague Mr Kwinter to read this amendment into the record while I go out and visit a political friend outside.

**Mr Carr:** David Peterson is back?

Interjections.

**Mr Kwinter:** Mr Sorbara moves that section 3 of the act, as set out in section 3 of the bill, as printed, be amended by adding the following subsections:

“(8a) If the Minister of Community and Social Services files a support order together with an assignment to the minister of the right to receive payment under the order, the director shall only make payments to the minister to the extent permitted under subsection (8b);

"(8b) The director must have reasonable grounds to believe that, if a payment is made to the minister, the remaining income of the person who would otherwise be entitled to receive support under the order is sufficient to maintain the person and his or her dependants above the poverty line as determined by Statistics Canada for a family of comparable size in the community in which the person resides;

"(8c) Despite the assignment to the minister of the right to receive payment under a support order, the director shall make payments under the order to the person who would otherwise be entitled to receive support under it to the extent necessary to maintain the person and his or her dependants at the poverty line."

**The Chair:** Thank you, Mr Kwinter. Mr Kwinter moves—

**Mr Morrow:** Dispense.

**The Chair:** Thank you. Any discussion, question? Mr Mills—Mr Wessinger.

**Mr Wessinger:** I would like to speak against the amendment. First of all, I think it would—

**Mr Kwinter:** Mr Chairman, on a point of order: I think it would be reasonable to have the mover at least explain the intent of his amendment before you speak against it.

**Mr Wessinger:** I am quite agreeable to that.

**The Chair:** You certainly have the opportunity to do so now. Mr Kwinter, go ahead.

**Mr Kwinter:** No, I said the mover.

**The Chair:** You moved the—

**Mr Sorbara:** No, he moved it, but I will speak to it on behalf of my party—

**Mr Kwinter:** I moved it on his behalf.

**The Chair:** On behalf of the mover, you would like to express the mover's intentions, Mr Sorbara?

**Mr Kwinter:** No, Mr Chairman. Again, on a point of order: when I read it I said that "Mr Sorbara moves." I was really reading it for him. He is the mover.

**The Chair:** We have a minor point because as I read it—it will show in the minutes as your having moved it. You spoke and I repeated "Mr Kwinter moves." Mr Sorbara, if you would like to speak to the intent of the mover.

**Mr Sorbara:** I want to thank Mr Kwinter, my colleague, who is the only one who is being reasonable at this point in this committee. Mr Chairman, the government members had a very difficult time accepting, and in fact defeated a little amendment dealing with equality—very disappointing. They could have just stood up. They have forgotten already that they are here because just—

**The Chair:** Mr Sorbara, may I remind you we are not speaking to that amendment which was just defeated, we are speaking to the amendment which your colleague just made, and comments about an amendment which has been defeated are no longer in order.

**Mr Sorbara:** I simply bear with the interruptions from the Chairman and when he is done I will continue.

The New Democratic Party members defeated an amendment which was a simple one. I just want to remind them that they are here not because they have the blessing of Howard Hampton or Howard Hampton's parliamentary assistant or Bob Rae, for that matter; they are here because more people voted for them in their ridings than voted for the candidate with the second largest number of votes. So they are going to have a terribly difficult time with this amendment because this amendment really is substantive. This amendment deals with child poverty.

Remember Howard Hampton's announcement in the House when he introduced this bill? Do you remember our response? Do you remember the response of the Progressive Conservative Party? Howard Hampton, in his statement to the House when he introduced this bill, said something like, "Mr Speaker, later today I will be introducing amendments to blah, blah, blah, blah, blah." Then he starts talking about child poverty. This is the government's effort—first effort, only effort—to deal with child poverty: "We want debtors to pay. Now we are going to call them payors, so we want payors to pay so that children will not have to go hungry; so that primarily wives will not have to be chasing after their defaulting husbands, either through SCOE or in spite of SCOE or with the assistance of SCOE."

If I learned anything during the hearings on this bill I learned once again that this issue of child poverty, and the very difficult circumstances that some women find themselves in after a separation, are very severe and I do not know how many of you—Kimble, you were not here for the hearings so you were not able to experience first-hand some of the submissions that were made. Some of them were very legalistic and could have been made directly to the ministry, but some of them really did tell a story and some of the submissions that we got by mail, by letter, written submissions, really told the story. Some women said: "Please pass this bill, we need it." Others said, "How dare you interfere with my relationship?" But the debate was joined and that is what we are here to do as elected officials, to arbitrate between these competing interests.

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The Attorney General said, "We want to deal with child poverty." My colleague, Mr Elston, said: "I have an amendment that will deal with child poverty. Here is an amendment and it has been read into the record by Mr Kwinter. We worked together; Murray drafted it, this is his idea; I am the whip. I am supposed to read it into the record, but I could not be here so Mr Kwinter did it." "There is nothing wrong with that, Mr Chairman. It all worked out. We are on the right subject.

Mr Elston says: "Let's deal with child poverty. Let's not let the government attach the money that is collected by SCOE if the woman who is to receive it, or the individual who is to receive it, is on social assistance, until such time as that woman is living above the poverty line." Read the amendment. It was read to you. Look at it again. It says, in effect, let's keep money flowing to the woman and her children until such time as she is living above the poverty line. Then the Ministry of Community and Social Services can come in and take by assignment the funds



that are coming into SCOE. Yes, she will be getting more than she deserves under the law. She will be getting not only the family benefits that are provided under the law, but she will be getting more, something good will be happening. She will emerge out of a life of poverty into what we describe as a minimum level of respectable life in this province. Surely the government members believe in that.

SCOE does not want this and now the Treasurer does not want it and Community and Social Services does not want it, but that is not the question here. The question is whether you want it, whether we want it. Mr Elston wants it. He told me that this is for him the sine qua non of his participation. The government said it wanted to deal with child poverty. He said: "I understand how government works and I have got a way to do that. Let's not let Community and Social Services take these funds coming in from the payor, the debtor, until such time as we are satisfied that the women and her children are living above the poverty line." Great amendment. Pretty good, Murray. Good thinking. Let's see whether the Attorney General really believes that his bill has to do with child poverty or whether he is just saying that. Does he really believe that this amendment should be defeated and can he still say that this bill deals with child poverty? Give me a break.

There is an opportunity here to say, "Government, keep your hands off that money until that person entitled to support and his or her children are living above the poverty line." That is what the amendment does. Legislative counsel has put it in legal language. It refers to and puts an obligation on the Minister of Community and Social Services, on the director, but the fact is that it benefits the individual entitled to support and her children.

We have an opportunity to strike out here, abandon the discipline of our caucuses and say, "We're just going to do this for these women and their children." That would be a great idea and we support it. I support it. I am going to vote in favour of it. I think it is very creative of Mr Elston to put at least one little provision in this bill that will substantively and in dollars-and-cents terms change the lives of some individuals in this province. We are here to make a difference. Elston says, "I want to make a difference." That is why he has put this amendment forward and that is why you have an opportunity to really make a difference, vote on it, support it and make this bill a living, breathing memorial to your time on this committee and the witnesses that you heard speaking so passionately about the troubled circumstances in which they live.

**Mr Wessenger:** I would speak against this amendment. Just to make a few comments on Mr Sorbara's comments. He says our existing bill does not deal in any way with poverty. I would beg to differ with him. I think if we have a more efficient collection process and we collect a higher percentage of support payments, that will have a positive impact. I agree that this will not solve the child poverty issue; it is not meant to solve the child poverty issue, it is really—

**Mr Sorbara:** Tell the minister that.

**Mr Wessenger:** It is really meant to deal with the problem of support payment, to make more efficient and workable support payment provisions.

With respect to the amendment, first of all from an administrative point of view, it would be difficult to deal with; but that is not my main objection to it, the administrative aspect. My main objection to it is that I happen to think that the whole matter of poverty should be dealt with through the whole SARC provisions and the implementation of those provisions. That is where we should be looking if we are going to deal with the whole question of poverty. We should deal with the question of poverty for all people and particularly all single parents and not deal with one particular group. What this amendment does is to create inequality between different recipients.

**Mr Sorbara:** That is right. You supported inequality last time, in the last amendment, so at least be consistent.

**Mr Wessenger:** This creates inequality between certain recipients. The person who receives support would get a higher income than the person who is not paid support or the person who is paid limited support. So we have different classes and levels of payments to people in economic need, and I think that would be only creating dissatisfaction throughout all society. We should look at the whole question of poverty and attack poverty directly, which I fully support, rather than to just pick out a small class of people and give them an additional benefit ahead of other people. In a sense of need, probably the person is worse off who receives no support through the court, or receives a small support payment through the court, than the person who receives a reasonable support payment through the court. So, on the whole basis that this creates great inequality and it deals with only a small aspect of poverty, rather than dealing with the whole thing in the way it should, I would have to speak against this amendment.

**Mr Elston:** Although I did not really buy the line by the Attorney General when he was here, and by his assistants, and by yourself and some of the other people who came in to say that this bill was a shot against child poverty, I put my mind to trying to create some provision in this bill that spoke to the issue of child poverty. This is the only way that we can turn this bill, which is really only a bureaucratic aid, into something that speaks to being an effective tool to fight child poverty.

Your reasoning about the creation of inequality among classes is specious. It is absolutely felonious. I just do not understand how you can sit there and say that, because we are allowing people to be paid to the poverty line, that creates a different class of citizen. What you are doing now is allowing people who are paid below the poverty line to have money deducted from their paycheque that they would have received from their spouses; you are allowing that money to be deducted and paid directly to the wealthiest organization in Ontario, the consolidated revenue fund, at the expense of men, women and children who live in need of food and shelter allowances. How you can advocate that when this is a practical way to at least help those people—this does not take necessarily every individual who has an assignment to the poverty level. All it says is

that, if they are receiving money below the poverty level, you do not pay the Treasurer of Ontario, you take the money and give it to those people to bring them closer to the poverty level. If they are getting social assistance, it does not mean that they are above the poverty level, it means that they are approaching it and this extra money from a private source, not even from a tax source but from a private source, can be collected by the Attorney General's department and paid to the men and women and children who need it to pay for food and shelter.

1130

This is a provision that actually goes to the issue that you people have been trying to manufacture for sale to the public on this bill. This does fight child poverty. This guarantees that the Treasurer, the consolidated revenue fund, takes only after a person is at least paid to the poverty line. I do not know how you can sit there and say, "We'll deal with it through SARC," after you have dealt with the hearings in committee and also in the Legislative Assembly on the introduction of this bill as though this were a piece of your war against child poverty, as though this were an essential part of the armament which you are using to destroy one of the greatest villains in our society, a wealthy society.

Yet what you people are doing through other amendments which have been presented is making sure that you have to deal only with the easy collectables through SCOE, that you only have to deal with paying the Treasurer of Ontario when you should be making that money payable to people who are below the poverty line. You persist in making the argument that this is a tool in the fight against poverty. This is a tool to collect money for the government. You people are reaping the benefits of a bureaucratic piece of legislation designed to help yourselves.

Why can you not just take a look at this as government members? I know Paul has his orders from the Attorney General and the department, but the other members do not. Why do you not see this as a way of supplementing the individuals who actually need some money to pay their rent and to pay for food? Would this not help those people that now go to food banks?

**Mr Sorbara:** Hear, hear.

**Mr Elston:** We have social assistance payments and people are entitled to those payments, to a certain level. But surely this is a private source of funding. It is not going to cost anything for the consolidated revenue fund. Just let them keep the money, let them keep the money up to the poverty level, then pay the Treasurer.

**Mr Poirier:** Well said.

**Mr Elston:** Then pay the Treasurer, but do not tell me that you have got to pay the Treasurer first just because there is an assignment out there and then come in here and berate former governments, both Tory and Liberal, for not taking steps to eliminate child poverty. You are on the horns of a dilemma, do you do what the Treasurer wants, ie "Pay me as much money as you can from those scoundrels and do not give it to the people in need," or are you going to go with what would make this a better and more socially responsible bill, that is, let the director make the

payment up to the poverty line? Give the director some real presence in this legislation. That would be of some help, and this amendment will give you a reason for claiming that it is a shot against child poverty. If you do not do something like this, you have not got a leg to stand on.

**Mr Carr:** I have a perfect example of something that this speaks to, and I want to thank first of all Mr Harrison, wherever he is, for helping me out with the problem. I had a gentleman that came into my office and he was under a garnishment order from unemployment, and he came into my office because he had no money. By bureaucratic error they took all his money and we had to rush him over and help process him through the social assistance program to get money. In other words, they were taking from somebody that had virtually no money to pay the rent and to actually pay for food. This is what this amendment gets into in subsections 8a and 8b, the fact that we are taking some money from some individuals on the one hand that cannot afford it. And this is a perfect example.

Actually, what happened is he came into my office and I came out to see what all the commotion was about on Friday there. He was so upset because he had this garnishment order, and through a mistake he had virtually no money to meet the rent that was coming due over the period. I guess it was coming due on Friday and we had got an emergency meeting with social assistance again on Monday to try to get him some money.

So we are in a situation now where we are taking money from the ones that can least afford it, and if this government—and I guess I was one of the naïve politicians who believed the Attorney General when he stood up and talked about child poverty—when you talk about helping alleviate some of the problems for some of the more disadvantaged in our society, if he truly believes in what he said, then I think the government should be supporting this amendment. Mr Elston has taken a lot of time to put this together, to draft it very clearly.

I guess you are right in the long term, you know; provisions like the SARC provisions and so on are what we are going to do in the long term, and if we are really going to talk long term, how are we going to give the people of this province the skill levels to be able to compete with the rest of the world so we can move people out of this terrible dilemma that we are in? But the Attorney General said himself that it is a first step and this amendment will be an even bigger step if it is passed by this committee, and I am hoping that some of the members on the government side will look at it and say, "It might be a small step in the overall scheme of things and it might only help one portion of the society that is not getting enough out there, but it will take a step towards helping those people." I am going to find it very difficult for any member who can talk about trying to eliminate child poverty that could actually vote against this amendment.

**Mr Sorbara:** I say to my friend, Mr Carr, that it is very well said and I think he makes a very good point. I hope some of the government members are going to speak to this. If they are going to vote against it, I think they have



an obligation to tell their constituents through Hansard why they are going to vote against it.

Just let me say a couple of things, Mr Chairman, apropos the remarks of Mr Elston and the parliamentary assistant to the Attorney General.

The government members should realize that this is a right-wing piece of legislation. The bill, all in, is a terribly right-wing, draconian bill based on American models which were designed to save the government of the United States of America and state governments money.

I am not kidding about this. Look at the history of the development of this sort of legislation. You know who it first applies against? They started off only with welfare recipients. It did not apply, and in many cases, still will not apply to people who are earning their own income, just welfare recipients. If it is a welfare case, by God, we are going to go in and attach the salaries and automatically deduct and reduce our welfare costs. Read the history of the bill. Ms Swift, who is the counsel to this committee, prepared some research for us and she makes the point right in there that it started off as a right-wing initiative by right-wing governments in the US to attach salaries to reduce the costs of welfare on both the national government in the US and the state government. It is right there in black and white. If you want to look at the history, if you want to take an adjournment and read Ms Swift's research, I invite you to do so because if you have read it, you will know that that is the case.

And why? Because they thought it was horrendous that individuals were getting both family benefits—or the American equivalent—and also that the support money was dribbling through. Welfare mothers were getting too much money; they were getting over the poverty line. My God, this is horrendous, that money should be ours, we are paying out family benefits. That is exactly what is happening here. The big beneficiary of this bill, you better believe this, is the Treasurer of the province of Ontario, who can attach the wages now, automatically deducting money, from those people who are receiving a salary and are not paying money and their ex-spouses are on family benefits. That is what is happening. And you know what, a lot of those guys say: "She's on family benefits, why the hell should I pay? Let the government pay." But the person who is really suffering is the woman and her children.

1140

So Elston says: "I have got a solution. If you want to deal with child poverty, let her keep the family benefits and deduct the money automatically and let her keep that, too. Not for ever, just until she gets above the poverty line, then the Treasurer can have his money. Let's prefer the individual living in poverty to the Treasurer? Why not?"

Elston got a little stroke of genius here. Let us turn it from a right-wing bill to a progressive left-wing, NDP bill, not a bureaucratic bill. Why not? Let us have some fun here. Let us make a difference in the lives of a few people.

If you do not do this, you are basically saying, "We do not care about child poverty. We want to believe the rhetoric of the Attorney General." And get this, the rhetoric of the Attorney General was drafted by the same bureaucrats who served Ian Scott and Roy McMurtry before him. Who

do you think wrote Howard Hampton's speech? Howie did not write it. Paul did not write it. Bob Rae did not write it. David Agnew did not write it. No way. I know who wrote it. I had those things written for me for five and a half years and now and again, I must admit, only now and again, I had the courage to say, "This is garbage and this is junk."

It is not always junk. We have got a good bureaucracy here. After all, they want more tools and the Treasurer says: "This is outrageous. We cannot do anything on social assistance because we have got all this leakage in the system." They call it, "leakage in the system." It is like, "The liberation of Kuwait has begun." You use that kind of language; not, "We are going to bomb the bejesus out of Iraq." "The liberation of Kuwait has begun."

You talk about child poverty, but one member of a committee offers you an opportunity to do something about it and you hang your head because, my God, we cannot really do this. The government will not allow us to do it.

Mr Wessinger said this would create unequal benefits. Of course; we have got a society based on unequal benefits. Some people earn \$150,000 a year and some people live on family benefits. That is not equality, but that is the kind of society we have. He says he wants to solve child poverty and poverty with SARC. As soon as you do that, by the way, Mr Elston's provisions would not apply any more. You are above the poverty line, so the Treasurer gets his money. It is okay. This only works while the woman and her children are living in poverty. It is the only thing that you have the ability to do that will really, substantively, change the dynamic of poverty, preferring one entity over another entity. We can play with whether or not a debtor should be called a payor or we should give new rights to individuals that buy the director a little bit, but this is substantive and it is courageous and it is gutsy, and if you have any guts, you are going to vote for it.

**The Chair:** Further discussion?

**Mr Sorbara:** Go ahead, Sharon, argue against it.

**Ms S. Murdock:** If I may, I would like some clarification rather than to make a comment, because I am having—and no reflection on whoever wrote this—but I do not feel that I am a stupid person, so I am assuming then that anyone else reading this would have some difficulty—

**Mr Elston:** This is clear legislative draftsmanship.

**Ms S. Murdock:** No, I do not think it is clear because I have taken at least four times—and I think what it is saying to me after the fourth time is that in cases where members who are recipients of family benefits and also have a support deduction order against their spouse, depending on what the allowed amount under FBA would be, would get a supplement of the support deduction amount up to the poverty line.

**Mr Elston:** No, it is not a supplement. The support payment is their entitlement except for the intervention of an assignment order so that they can get FBA. It is not a supplement. It is their money.

**Ms S. Murdock:** I am trying to look at this as if it were in place already and Comsoc would then be giving a

recipient of FBA the FBA-allowable amount of money plus the amount under the support deduction up to the poverty line for an indefinite period of time. And that any amount over the supplement—

**Mr Elston:** Over the poverty line.

**Ms S. Murdock:** —yes, over the poverty line would then revert to the consolidated—

**Mr Elston:** That is right. Under the assignment.

**Ms S. Murdock:** Yes. Okay.

**Mr Elston:** That is correct.

**Ms S. Murdock:** That is why I am having problems with this, because I think you have to read it about four times before you get—

**Mr Elston:** Listen. This legislation will be around for a long time and lots of people will understand how to process it. If you want to make it clearer, that is one thing. If you are going to vote against it because of that, that is totally another issue. I am prepared to let people clarify this thing if you want, but I am not prepared to go down without a big struggle if you guys are going to vote against this.

**Ms S. Murdock:** I guess my problem with it is in terms of Comsoc and inequality. I have listened to Mr Sorbara's argument and I guess I do not know exactly what I am thinking here except that I would like to think about it.

**Mr Elston:** You are trying to rationalize your way out of voting for it.

**Ms S. Murdock:** Yes—no, I am not. I am trying to see why it does not sit right with me.

**The Chair:** Ms Murdock, are you asking that the vote be stood down or considered at a latter time?

**Ms S. Murdock:** If we could, may we?

**Mr Sorbara:** With all due respect, Mr Chair, there is a discussion going on consistent with the way in which discussions go on in this committee, and I do not think you need to put words in her mouth.

**The Chair:** With great respect, I have asked Ms Murdock a question. She is a member and quite incapable of being led.

**Mr Elston:** Mr Chair, I am prepared to agree. I think it would merit some further consideration. I am not against

it being stepped down for some chatting over the lunch-time with the government caucus, whatever is worth while. I am not sure about adjourning but I am prepared to let it step down because this is an important part of this bill, for my purposes, and if that is what it takes, that is quite agreeable.

**Ms S. Murdock:** Mr Chairman—

**The Chair:** Mr Mills. I am sorry, were you finished?

**Ms S. Murdock:** No. Given how I often decide things, I would feel more comfortable having some discussion on this.

**The Chair:** Okay. So that is a request to set it aside. Yes?

**Ms S. Murdock:** Yes, to stand it down.

**Mr Morrow:** I will be supporting standing it down.

**The Chair:** Is there unanimous consent? Okay, so that amendment is stood down.

**Mr Sorbara:** Mr Chairman, just on a point of order, should we perhaps adjourn for lunch now? We have got 10 more minutes, we could just take up this matter after lunch. Were you thinking of calling it back? When you are standing it down, you are talking about over the lunch hour? You want to continue the discussion? Because we are getting into government motions now and you know these are imprimatur and they will go pretty quickly, so if you could just—

**The Chair:** The clerk reminds me that we have set until 2 o'clock for lunch break—

**Mr Sorbara:** No, no.

**The Chair:** The clerk reminds me that if we wish to resume earlier than that, we would need unanimous consent.

**Mr Sorbara:** A quarter to two, I would be happy with. I have a luncheon engagement which is going to take me right up until 1:30. I could be here by quarter to 2.

**The Chair:** So we require unanimous consent to return earlier than that time. What time is agreed upon?

**Mr Mills:** 1:45.

**The Chair:** Is 1:45 agreed upon unanimously? Agreed. We are adjourned until 1:45 in the afternoon.

The committee recessed at 1149.



## AFTERNOON SITTING

The committee resumed at 1355 in committee room 2.

**The Chair:** I would like to call the meeting to order again. We left off with page 7. In this morning's proceedings we stood down a particular Liberal motion by Mr Kwinter, which is on page 7. Do we have any further discussion on that particular motion? I think we were about to call a vote on that.

**Ms S. Murdock:** I do not think we were ready to call a vote because I had some uncertainties. I have looked at it and thought about it all through lunch, and I think I can articulate why I am going to oppose this.

First of all, I think the principle is an absolutely and positively good one; no one could disagree with it. The problem that I am seeing—and I guess that is why it was not sitting so well with me—is that the Minister of Community and Social Services is the one who is going to have to make the determination to do this, not the Ministry of the Attorney General.

The other thing I have with that is that, yes, there will be inequities, but I see the role of Community and Social Services as not being one whereby it is picking up the defaulter's payments, which is what would in effect happen.

**Mr Elston:** That is what they are doing now.

**Ms S. Murdock:** But this legislation, I do not believe its purpose is that. No legislation 100% is going to catch everyone, and as much as we would like it to, as much as we would like everyone to be paying the support of their children, in reality there is no way any legislation is going to do that. I think this is probably a whole instrument itself in terms of a first step to a guaranteed annual income. That is what I see this as, and I do not think that this legislation is the place for it. On that basis I am going to vote against it.

**Mr Mills:** I know my colleague Gregory over there has a great delight in making me in particular feel dreadful about—

**Mr Sorbara:** Make my day.

**Ms S. Murdock:** Yes, it is true.

**Mr Mills:** I like to think of my position here, as well as a politician, as a humanitarian, and I listened to all what you are saying. You are supposed to enjoy your lunch but all the time, like Sharon here, it is going over in your mind. I must say that I have come to grips with my decision, and I know that you are going to say it is a copout, but I do not think it is.

I think that the manner of the support payments is not a matter for this bill or this Attorney General. I think that it is a Community and Social Services problem, and that is where it should be addressed, in my opinion. I would also like to say that I have a gut feeling that is not the way we should be levelling payments. Some are going to benefit, some are not, and I think that perhaps what we should be looking at down the road is a broader war on poverty, and that is really where we should all be coming, through raising the benefits, to grips with that. Further, the whole

mechanism of this bill, in my opinion, is a little suspect, and we cannot—

**Mr Sorbara:** I agree with you there; the mechanism of the bill is suspect.

**Mr Mills:** Yes, the mechanism. We cannot look at poverty as a statistic, and I think that is how we are trying to look at it: as a statistic. I do not think we can do that, because you have got some folks who live in subsidized housing, and how can you ration their payments as against someone who lives where I do in a private apartment where 50% of the income does not relate to those living costs?

I appreciate all that you have said. As I said yesterday, it is a learning experience for me, and it continues to be one, and I am very, very much pleased to hear the empathy that everyone has here for poverty and in particular children in poverty. Greg, you have made me feel terribly guilty, but I am going to support the government's position. I hope you understand why.

1400

**Mr Elston:** I remember meeting a member early on in this sitting who said, once the way around this building was familiar to the member, that decisions would be made on the basis of not whether it was in support of the government but whether or not it was in support of principles worth supporting. I am concerned that at least a couple of members have had the courage, and I underscore the members who have spoken from the NDP caucus, to tell us that they are not going to support this, for reasons which I believe are not very substantial.

To say that this committee of 12 people has no duty to take a shot at providing more money to people who are in need of money for payment for rent and for food and the very basics of clothing for children, that in fact it is the duty of Community and Social Services to pay more money at a certain time in the future when the Treasurer's budget will be full of extra pennies—and we have heard him sing songs; in fact Mr Mills and I sat on a committee that did some prebudget stuff; I subbed in but Mr Mills was there as a full member. It is quite clear to me that the day when Community and Social Services will be substantially increasing the amounts of money due from the taxpayers to these people in need of money for shelter and food, is a long way off.

We listened through those hearings to the Treasurer describing his plight and the plight of the government with expectations built on a paper called the Agenda for People, and how the expectations were going to have to be lined up one against the other in competition for scarce resources as a result of the recession, even though we noted that there was substantial money coming in. Today that may be again restricted by the federal Minister of Finance as he delivers his budget.

But I cannot say how strongly I disagree with the members when they say they should not take this opportunity to merely direct the director, or provide a provision in

which the director under this legislation can say, "We have not reached the poverty line for these individuals and there are men and women and children in need of finances." So, as a result, they will vote against this one really concrete item that we can put in this bill that would put money in the pockets of people in need.

I cannot believe that the people here would have signed on board with the Attorney General and his department, and even some of the presenters who came and said, "This is the first tool in the fight against child poverty," when there is not one single dollar added to those people except if we catch the odd problem contributor. These people in the bureaucracy will only attack—and we saw that in the previous amendments—the easy collectibles. Otherwise you will have to go through the court like before.

This is a very easy section to put actual dollars in, not taxpayer's dollars, actual dollars that are destined to go to the recipients in need. We are not talking about somebody who has an award for \$2,500 a month. These are not women and children who are receiving massive amounts of money. These are women and children—in some cases men and children, but generally women and children—receiving welfare benefits, family benefits, general welfare assistance, who are not getting enough money to go beyond the poverty level, who are not getting enough money to pay for rent. These are people who are having to resort, if not weekly at least monthly and as often as possible, to going to the food banks to get enough for their children to live on so they can get some nourishment. And you are telling me that while we have the opportunity of making a real difference in this committee to those people's lives, you would say, "Let's give it to Comsoc." All we are doing here is letting the director make a decision that those people actually need money which was supposed to go to them in the first place but for the intervention of Community and Social Services with an assignment. They are asking any payments made to the court or the bureaucracy to be paid to Community and Social Services instead of the people in need, and why? So that you can reduce the load on the Treasury of Ontario; so that you can replenish the coffers that had been dwindling as a result of the increased welfare case load.

It is nice to think in those terms that you want to help the Treasurer out, that you want to have the consolidated revenue fund available to do those nice things that treasurers and Treasury departments do at the tail-end of a year, but I will tell you that does not give one woman or child one bit more food or otherwise. You are capping them for ever at the level of social welfare benefits, unless the individual himself or sometimes herself has an award to pay an amount much, much beyond what the general assistance benefits are. I am concerned that Ms Murdock has indicated that, "You can't catch everybody." But of course this amendment does deal with everybody who is caught. If the dependants for the payor are receiving social assistance below the poverty line all I am asking is that money which was supposed to go to them anyway in the first place go to them until the poverty line at least is reached. That is not allocating new money. That is taking money that was primarily for the purpose of supporting men,

women and children in need of support by the payor spouse.

I would like to have heard that there were some refinements here, perhaps to the amendments if you decided that it was not clear enough, but I think it is quite clear after having read it several times. I would have been quite willing to refine it in that way but I am not prepared to go without a very valiant struggle concerning the principles of making money available to take these people just to the poverty level. Community and Social Services will take all the money that they can get their hands on so that they can recycle it perhaps. But you are asking people in need, people below the poverty line, people in depressed economic conditions, people who are at an economic disadvantage, to pay the cost of recirculating money through the government of Ontario, and not necessarily to Community and Social Services. Do you know this money could go out to help commission a new study for a follow-up to the Social Assistance Review Committee report? It might even be worthwhile in somebody's vision. But it does not deliver one penny of money to the people who need it. And you are asking the people in need to subsidize the rest of the government's operations.

I am really concerned as well that you would rest your case on the issue of inequity. There are so many places in our society where there are inequalities. I make more money than a number of other people do in my riding. My family live in a house which is bigger than a number of other people's in my riding. That is an inequality. Some people pay amounts of money to the extent possible and are given orders for support to the extent possible, which does not take those individuals past the poverty line. But a judge and a court has decided that they are paying to the best of their ability, in which case you reduce the entire family unit, in two groups, into a state of poverty where they might just have happened to have gone just slightly above the poverty line before as one unit. There are inequalities. And for you to tell me that you believe this amendment should be defeated because it retains the type of inequalities that exist in our system is, I am afraid to use the words of one of my colleagues who spoke, "a copout."

#### 1410

It is in fact a shame that we do not have the heart to make this one slight change. All it does is put in priority to the government of Ontario the women and children in need. I will tell you, taking somebody to the poverty line is not any great advantage but it sure is a help. All of us recognize that. But to tell the men and women and children of this province who are in need that they have to take second place to the consolidated revenue fund is really taking this beyond good social policy. It also sustains for me the argument which we have made on several occasions: that this bill is not about child poverty and an attack against that, but it is purely and most simply an attack against those items that are systemic barriers to an efficient bureaucracy carrying out a harvest of private funds for public purposes.

I cannot countenance that type of change of direction in this particular committee. The Attorney General appeared here, the parliamentary assistant appeared here, and



both spoke about this as a tool against child poverty. We confirmed yesterday in the preamble to our meeting—questioning from myself to Mr Wessinger—that one of the most high-profile purposes of this bill was to attack child poverty. And when we have a chance to actually do it—in a small way, because this does not eliminate the difficulties with which people in need are faced—we have copped out as a committee.

When we could have had a difference and said that people come before treasurers, the government caucus has said: “We will support the Treasurer.” I do not believe for a moment, Mr Chair, that these people really want to do that, because I know where they come from, a good number of them. But they are taking the government line and we were told during the elections that these people are different, that they are not politicians in the way that politicians visited this Legislative Assembly before. And I watched with great concern and with great chagrin as a number of my colleagues from a previous Parliament were savagely attacked for not having the willpower to stand up in support of principles that some of the opposition people said were paramount.

Here is the opportunity for people to be different and stand up for principles about which a good number of us believe, despite partisan loyalties. I believe that people in need, people in a state of poverty, should have every opportunity visited upon them to eliminate as many difficulties as is possible. Here is one place where that is possible, and I feel very strongly about that. I said to some people outside this committee as we broke this morning that I was prepared to see amendments made and I countenance changes, anything that would help, but that I would rant and I would rail about the movement to defeat this very sensible amendment. Whom does it injure? Whom will this piece of amending legislation injure? The Treasurer of Ontario? For how many dollars?

What were the estimates about the numbers of dollars that would go to the consolidated revenue fund? We did not have enough precision with respect to the statistics to really know, but I will bet you somebody in Treasury has a good idea of what can be expected from an increased harvest of these dollars. Those people are getting those dollars in priority to people who are living in poverty.

If you people pretend to try to continue to sell this piece of legislation as an attack on poverty, then you are very, very much mistaken and very, very much at risk. I will not use a couple of other words; I feel that strongly about this and about your efforts here to get by it.

How can you put the consolidated revenue fund first when you espouse the principles of support for those individuals in need? If you are going to move quickly enough as a government to implement the second phase of SARC and other parts of the SARC program, then you are not going to have to deal with the dislocation of the Treasurer. Heaven knows, if you are committed enough to implement SARC in all its phases, then the dislocation that this amendment will make for your finances will not be very long in duration. How much can you be at risk? As much as you think that you are at risk from your Treasury people, from your Treasurer colleague and from his parlia-

mentary assistant and others, or from the Community and Social Services people—of course, they do not really care anyway, because they do not get the money, remember? The money that is collected here and sent on assignment goes back to the consolidated revenue fund. Community and Social Services can have another shot at it when it is divvied up as a bit of surplus, but they do not get all the money.

But ask yourself this: What each month does the deduction mean for the women and children in need? How much can you really see them trudging down the streets, lonely often, depressed almost always, oppressed and without economic power, to go almost begging at a food bank and hoping that the material which has been donated there is sufficient and varied enough to make their diets reasonable? I will tell you, there are a few of us, even Liberals, and a few of us, even Conservatives, who think about that human aspect of people's existence. Try as we might, we cannot eliminate it all at one time. But each one of us who has a commitment to those individuals will take every opportunity we can to try and make one small contribution to the elimination of those problems.

A long journey begins with the first step. It is a long journey. But this could be a real, practical, effective first step. Small, but first. And a little bit of dynamic in it. A little bit of independence of judgement. And nothing that is going to spend taxpayers' dollars. This money is supposed to go to those women and children anyway.

I do not think it is probably worth while going on any more, except to tell you that I am surprised.

**Mr Sorbara:** I just have a few more words to say about this amendment. I want to begin by saying to my colleague Mr Mills and to Ms Murdock as well that I understand where they are coming from and I understand the dilemma that this puts them in. Believe me, all of us have been in these kinds of dilemmas ever since we entered politics. The difference is between what we would like to do and what we think we can do.

There was a very interesting interview with Prime Minister Pierre Elliott Trudeau. I think it was one of those fireside chats that he used to have with the CTV national news guy—I cannot remember his name—on New Year's Eve or around New Year's Eve.

**Mr Elston:** Bruce Phillips.

**Mr Sorbara:** I think it was Phillips, yes. And I think it was in 1971, one of these New Year's Eve fireside chats, and he was asked the question, having been Prime Minister three years or so: What was his strongest impression of his responsibilities? His answer was—I will always remember it—“How little I can do. How very little I can accomplish.”

So our friends here in the government party on this committee are getting the first sense of how little they can really do. They are good people; they would like to deal with child poverty. They know that if they could just summon up the courage or something or other, or change the system, they could vote for Murray's amendment and thumb their nose at the way in which business has been done around here for the past 125 years. I know about how

little we can do. I have had that experience for five and a half years: the difference between what one would like to accomplish as an elected official and what one can actually accomplish given the power of the systems.

To tell you the truth, what hurts us so much as politicians is the difference between what we say we are doing and what we actually do. This bill is not the only case in point, but it is just such a good example for our friends the newly elected members to start off with. Again, the whole speech of Howard Hampton on child poverty: a tragic mistake, because you got off on the wrong foot. Look at the section—and I am going to discuss this section—that we just skipped over that was approved without any amendment, subsection 2(1) of the bill: “There shall be a director of the child and family support office who shall be appointed by the Lieutenant Governor in Council.”

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This bill changes the name of the director and the office from SCOE, support and custody order enforcement, to child and family support office. How tender, how appropriate. We say that we are doing something else but we are not really doing it. We are changing the imagery. This is the party of the environment. Do you know how many envelopes you are going to throw out because you have got the wrong name on the envelope now? Hundreds and hundreds and hundreds. But it is imagery, so it is important.

The article in this morning's paper about our committee hearings—get this lead on the story, this is great: “The Ontario government has rejigged a new payroll deduction program to collect family support payments because it liked the ideas it got from the public and opposition MPPs, Attorney General Howard Hampton says.”

Do you know what I say to that? I cannot say anything about that because it is unprintable in Hansard. Let's try “hogwash.” That is nonsense. The parliamentary assistant would not even give a speech about the way in which these amendments, some 57 of them, reflect what we heard during the committee hearings. We have not even heard that speech. But I gave a speech about how I did not think these amendments did it and what did Howard Hampton do? He raced out and told the press that the bill has been rejigged—give me a break, Howard—as a result of what we heard.

Let's see, I am keeping score with Mr Mills and I think I am winning 2-1 as we go amendment by amendment.

Certainly this amendment that Mr Elston put forward has to do a little bit with what we heard about the real-life circumstances of people living in poverty and trying to rely on the enforcement powers—even though we are changing the name—of SCOE.

I think what Howard Hampton said to the press today about the impact of the public hearings was absolute nonsense. That does all of us a disservice because that is what makes people so angry. People actually read that stuff and they see that Paula Todd says, “The Attorney General said we rejigged.” Then the people who took the time to come before the committee look at the amendments and say, “This isn't rejigged. This is touched up; there's a little bit of paint over this crack here. There's no rejigging. Why did they say that? Why did Bob Rae say during the elec-

tion campaign that the Liberal record is one of rewarding their friends?”

Do you know how insulting that is to a politician, to say that you are elected and you are rewarding your friends? Hogwash, lies, horse bananas. And here we are again; we are going down the same road.

I want to say to you, in conclusion, that the amendment presented by Mr Elston rejigs, yes, rejigs the bill. Howard Hampton said that the bill is being rejigged, but in this case the government members are going to defeat this and, therefore, in this case at least, it is not rejigged. I submit to my friend, Mr Mills, that I am now winning 3-1.

**Mr Mills:** Maybe I should not have stopped you.

**Mr Sorbara:** I just want to make a note of 3-1 here.

Motion negated.

**The Chair:** The clerk keeps reminding me and I keep forgetting to make an announcement in regard to tomorrow's meeting, which has been rescheduled.

**Clerk of the Committee:** Let me just clarify. The people that we had scheduled for the 123 tomorrow, we had two witnesses. One witness cancelled and instead of bringing the committee in for only half an hour, the Wednesday person agreed to appear at another date. So at this point we are starting the 123 on Thursday morning.

**Mr Sorbara:** And what, may I ask, are we doing tomorrow?

**Clerk of the Committee:** That is up to the committee to decide.

**The Chair:** Mr Wessinger moves that section 3a of the act, as set out in section 3 of the bill, as printed, be struck out and the following substituted:

“3a.(1) An Ontario court that makes a support order which provides for payment of support on a periodic basis at regular intervals shall also make a support deduction order for the payment of the periodic support ordered.

“(2) A support deduction order shall not be made in respect of a provisional order.

“(3) Before making a support deduction order, the court shall make such inquiries as it considers necessary to determine the names and addresses of each income source of the payor and the amounts paid to the payor by each income source.

“(4) If the support order is sought on consent or by way of motion for judgement or if the making of the support order is uncontested, the persons prescribed by the regulations shall give the court the particulars described in subsection (3) and such other information as may be prescribed.

“(5) A support deduction order shall be made even though the court cannot identify an income source in respect of the payor at the time the support order is made.”

**Mr Wessinger:** What we want to make clear is that the order for payment of support on a periodic basis is made so that the support deduction will apply in that case on the same terms.

The other aspect is, we want to ensure that the courts make inquiries that they deem appropriate to determine the names and addresses. The reason this was put in is because



there has been some concern expressed by the judiciary with respect to clarity.

Subsection 3a(4) requires that in the court the information will be provided without having to attend personally, so we can get information without requiring personal attendance.

Subsection 3a(5) makes it clear the support deduction order is made even though the support deduction order would be inoperable at the time. This is so there is always a support deduction order even if there is no income source at the time the original order for support is made.

**Mr Sorbara:** My first question is to Mr Mills. Can he identify the testimony that we heard during the public hearings that is the basis for these amendments?

**The Chair:** Your question is to Mr Mills?

**Mr Sorbara:** He does not have to answer it.

**Mr Mills:** I think this was from the judiciary. It was not from the public; right?

**Mr Sorbara:** I think that is right.

**Mr Mills:** So I cannot pick up 3-2, you see.

**Mr Sorbara:** No, you cannot. It is going to be 4-1 at the end of this round, I think.

**Mr Mills:** I think ultimately the score will depend upon the perception of the bill by the public, the people who vote.

**The Chair:** The gentlemen who want to play tennis, perhaps we could—

**Mr Wessenger:** I should add that the Canadian Bar Association raised the question of uncertainty with respect to what would be ordered to be paid. So this was also in response to the Canadian Bar Association.

**Mr Sorbara:** I understand why the government is bringing forward this amendment. It obviously makes the system work slightly more efficiently. I notice that the wording has been tightened up and the phrase "at regular intervals" modifying periodic payments has been included in subsection (1) of section 3a here. I guess there was a discussion about that during consideration of the inclusion of the definition of provisional order, so I will not get into that discussion again.

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Subsection 3a(3) really is a rather interesting subsection, and I think probably warrants some discussion and some reconsideration. Let's go over it again. "Before making a support deduction order, the court shall make such inquiries as it considers necessary to determine the names and addresses of each income source of the payor and the amounts paid to the payor by each income source."

So there is the section that allows the court to squeeze the information out of the debtor as to where he or she is working and how much money is being made. This is necessary for this kind of interventionist legislation, because if you have not got the information—remember, this bill is about using better administrative tools to get this money flowing into the government and then out of the government again into the hands of the person for whose benefit it is being paid.

But look at subsection 3a(4) and start to worry. This is where legislators ought to start to worry, because this says

that, if there is no one appearing before the court, everything is going to be done on consent. We do not know whom to ask, so we are going to set out the categories of people from whom we can demand information. Remember that phrase; you will see it over and over again when the government wants to do something after a law is passed: "prescribed by the regulations." The "persons prescribed by the regulations shall give the court the particulars described in subsection (3) and such other information as may be prescribed." You know what that means? Even if there is no contest in the court, even if your lawyer is taking this application and it is all going to be settled without your appearance, your lawyer is going to have to say to you: "I need all of this information. The law says you have to give it." Not only the information about who the income source is, but—be careful—"such other information as may be prescribed."

I would like the parliamentary assistant to the Attorney General to tell us what that little phrase means. What else? What other information may be prescribed? After all, in subsection 3a(3) you are saying that the debtor or the payor is going to have to tell the court where he is working. That is understandable; you have to be able to squeeze that information out. But what about the next thing? What are you trying to get at? Who you are seeing lately? Have you got any travel plans? Do you beat your dog? What is going on here? What other information are they trying to get? Why is that phrase there?

I notice, finally, how draconian it gets in subsection 3a(5). "A support deduction order shall"—not "may" or "might" but "shall," "shall" is a very important word in statutes—"be made even though the court cannot identify an income source in respect of the payor at the time the support order is made." So it gets filled out in blank. If you ever get a job and if we ever find out where you are working we have already got the support order. You do not have to come back. That is pretty stiff. Does anyone think that is stiff? Sharon thinks it is good. Gord thinks it is stiff. I think it is pretty stiff. I think that we are compromising civil rights here just a little bit.

I think the whole bill compromises civil rights pretty significantly. After all, the relationship between employer and employee was a private one. The state has intervened. Remember the history of this stuff, though. Remember the history: right-wing American legislation trying to cut down welfare payments. We should have our own researcher testify in that regard on this point. So surely if you are going to be right-wing and draconian you say to the court and you say to SCOE—let us stop calling it SCOE, by the way; let us start calling it the child and family support office—you say to the child and family support office, which has just gotten rid of the word "enforcement," that they can now have one of these support deduction orders in blank.

In other words, the guy is up there during the family law proceedings and the judge says to him: "Where do you work, sir?" "I'm sorry, I'm out of a job." "Well, where are you going to be working? Do you intend getting a job? Do you think you'll be working soon?" "Well, I've applied around but there's been nothing going. The economy's in a

hell of a mess and the new NDP government isn't doing anything about the recession so I don't know when I'm going to be working." Well the judge says: "Okay, fill out that order in blank. No income source may be put, just give it to the child and family support office and they can do the detective work and if they find an employer later they can fill it in." I guess when you are intervening in the private relationship between an employer and an employee that is okay. I guess that is what we buy.

Look at the way the section used to read. Subsection 3(8) used to be very simple: An Ontario court that makes a support order other than a provisional order shall also make a support deduction order in respect of the debtor under the support order. That is not very draconian, you see, because it is a little bit vague. What about if he does not have a job? Well, uncertain. What about if they cannot get the information? Well, uncertain. So what do you do? You bring forward amendments that say, "Intervene even further." Any rights here to the debtor or payor? No. We will just fill out the order in blank and then file it with the child and family support office.

I guess, as far as this legislation is concerned, if you are going to be draconian you need this kind of thing and if you find that it does not work you will be back here next year asking for further amendments to require something further, if it is not working yet. The truth is, one of the reasons why it is not working is because these folks do not have enough money to run this office, even though you would not support Mr Elston's bill to take a little money away from the Treasurer. They do not have enough money and that is why we are having the problems that we are having.

I am not surprised, Mr Chairman, that the government is bringing forward this amendment. I have some concerns about the rights that we are giving here to the office to fill out an order in blank. It is like issuing a summons in blank, you know. We have rights in this country and governments are all about establishing rights. The Charter of Rights and Freedoms—we are letting people off now who have committed serious criminal offences because the state could not get its act together to bring them to trial within eight months and those people are going free. We are going to put some burden on government. But over here, we take the rights away. If you do not have a job or you are not co-operating, we will fill it out in blank. Give me a break.

We giveth with one hand and we taketh away with another. But the government needs it. The government needs it because, notwithstanding that Howard Hampton gave a speech on child poverty, what we have here is legislation that is all about stricter enforcement. Those are my comments, Mr Chairman.

**The Chair:** Thank you, Mr Sorbara. Mrs Cunningham, then Mr Wessenger and Mr Carr.

**Mrs Cunningham:** I had the same kinds of questions with regard to subsection 4 and I am wondering if we could have some examples of this, "such other information as may be prescribed." What are we looking for there?

**Mr Wessenger:** That is what I was going to speak on, Mrs Cunningham, the whole question. This is not some draconian concept, as Mr Sorbara likes to paint it. It is really to allow the court to proceed without requiring the party to be present in court. In order to allow the party not to be present in court, there will obviously be an affidavit that will have to be filled out by both parties making the court application. There will obviously be material that will be required to be filed in that affidavit so that an order can be made without the parties appearing; and the type of information that is anticipated to be in that affidavit would be the name and address of the income sources, the amount of it—

**Mr Sorbara:** Just let me interrupt the parliamentary assistant. That is already covered in subsection 3. The name and addresses of the income source is already covered. We are okay with you that far. It is the "such other information as may be prescribed," that Mrs Cunningham and I have a problem with.

**Mr Wessenger:** I will just go through the whole information.

**Mr Sorbara:** Name and address.

**Mr Wessenger:** The amount of income received, obviously from the income source. Sometimes there will be a consent to dispensing with the deduction order taking effect under one of the sections, and it would have to be information necessary to determine if there is a consent. Second, information that the amount of security could be posted is appropriate with the section. So that is the type of information we are looking at being included. Having it included in affidavits is a way, really, to assist the parties because, when they have worked things out by agreement, there is no reason to force them to come to court. It is only sensible to have the ability to submit that evidence through affidavit.

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**Mr Mills:** So you know that you have checked something out if anyone has a problem with it.

**Mr Wessenger:** No, that is not the intention.

**Mrs Cunningham:** No. I have had it read into the record and I am just wondering what we did before we had this. Why is there a need to go into this kind of detail? How did it all work before? Was there a weakness in the system? Is this something that did not work? It is not something that was brought to our attention.

**Mr Wessenger:** We did not, of course, have the income source, we did not have the deduction, so this is a new process being brought in so that you have to have the—

**Mrs Cunningham:** To parallel—

**Mr Wessenger:** —the parallel, the new program that was brought in. As I said, this is no hidden draconian thing. The act states that "The court shall make such inquiries." You can make those inquiries if the person is present. You cannot make the inquiries if the persons are not present, so you have to have an alternative method of dealing with it, which is by prescribing by regulation the information that has to be contained in the affidavit filed



by the parties. To me it is an alternative, a simple alternative way of dealing with it.

**Mr Carr:** My question is on the same point. I wonder if maybe I can follow along the same line. The penalty for that would now be, what, contempt of court, then? If I said, "No, I'm not going to give that information," right now there is not anything you can do. Presumably the penalty under this is contempt of court.

**Mr Wessenger:** There is an obligation on the parties to provide financial information even under the present system.

**Mr Carr:** The penalty now—if somebody does not abide by subsection 4 they would then be in contempt of court. Would that be right?

**Mr Wessenger:** Yes, possibly, if they did not provide financial information, yes.

**Mr Carr:** So that is our penalty. Before, because it was not ordered, nobody could really get caught in contempt of court, and now we are putting it in so if you do not do—

**Mr Wessenger:** No, no. Previously, under the existing legislation, if a party does not provide a financial statement to the court, they are presently, under the existing family law act—so there is an existing—

**Mr Carr:** So the employer is in there.

**Mr Wessenger:** Yes, that is right, and, second, the pleadings could get struck out as another alternative. It would not necessarily be contempt of court, the court might decide they just strike out the parties' pleadings, in which case the person asking for the support would get exactly what they asked for instead of the determination.

**Mr Carr:** The court does not really have a weapon, though, to enforce it, does it, other than contempt of court?

**Mr Wessenger:** You mean in the sense of the income, an unco-operative party who fails to provide a financial statement?

**Mr Carr:** If somebody says, "No, we're not giving a financial statement," what would the court do?

**Mr Wessenger:** You could summons them to court. If they do not attend in court then—

**Mr Carr:** They would be found in contempt.

**Mr Wessenger:** —it would be contempt of court, yes, that would be the normal proceeding.

**Mr Carr:** But that can still happen now.

**Mr Wessenger:** Yes, that can still happen now.

**Mrs Cunningham:** Just following along the same lines, if—did you want to respond?

**Mr Carr:** No, go ahead.

**Mrs Cunningham:** Under the act that does the garnishment, is this kind of detail in that particular legislation as well? I do not know that one.

**Mr Wessenger:** I will let the staff—

**Ms Feldman:** Under the garnishment rules, what the program uses are rules of the provincial court. It does not tie into the making of this court order, and the kind of information that is needed is not necessary from the court's

end of things, so because it is conditional on default, the garnishment process, the trace-and-locate is happening in the office, and this information comes to us after it is sought out or voluntarily given to the program. This type of information is not needed in order to initiate garnishment proceedings. It is needed in order to initiate the support deduction system. So the answer is no, the same type of information is not needed at the court door for garnishment.

**The Chair:** Does that suffice?

**Mrs Cunningham:** Yes, but—

**Mr Wessenger:** I will ask staff to correct me if I am wrong here, but in the case of a non-payment by a payor presently, if the SCOE believe that the payor had income sources but did not know what those income sources were, they could have a default hearing, in which case the payor would be obliged to provide all that information. Is that correct? Yes.

**Mrs Cunningham:** But none of that is written into any legislation.

**Mr Wessenger:** Yes, it is.

**Mrs Cunningham:** It is written in?

**Mr Wessenger:** In the existing SCOE legislation.

**Ms Feldman:** Section 11 of the existing act deals with financial statements and the receipt of information in the context of a default hearing.

**Mrs Cunningham:** Okay.

**Ms Feldman:** Another thing to keep in mind with respect to the support deduction order is that, because the parties are in court or because they have filed pleadings, there are requirements that are necessary in the ordinary course of that litigation: financial statements, sometimes cross-examinations will be held and transcripts received and what not. So this ties into that whole sphere of what information has to be available to the court in order for them to make these initial orders, both the support order and then the corollary support deduction order.

**Mrs Cunningham:** Could I ask another question on that? Going back to subsection 3g(4), another aspect here, the persons prescribed by the regulations, as we refer to regulations: What is left for the regulations, given what we are putting into this act right now?

**Ms Pilcow:** What the regulations mean to set out is exactly what the procedure is going to be, where there is a consent matter before the court. Generally speaking, a lot of this is dealt with by the rules of court. So whether you deal with it in a rule or you deal with it in the regulations, does not make a huge difference. What we are dealing with is procedure, as opposed to substance. What we are saying is that people will be required to provide this information to the court to enable it to make a support deduction order or to enable it to make a suspension order; and what we are saying is that we are going to provide the exact mechanism by which that information gets before the court. When the parties are there, the court just asks. When the parties are not there, we have to establish what they are going to file. Is it going to be an affidavit, will both of them file affidavits? Depending on what they are asking for, different procedures will be appropriate.

For example, if all they are asking for is support and a support deduction order, only the payor will be obliged to file information to set out the income source and the amounts required to be paid. If they are asking for a suspension on consent, both parties are going to have to say, "Yes, we consent to a suspension," what the security proposed to be posted is and why that amount of security is appropriate. The court is then again in a position to make the order which it would make in the ordinary course if the parties were there, based on the information provided by both of them. I do not think it is appropriate to put that level of detail, in terms of procedure, into the act.

**Mrs Cunningham:** I am just wondering if we even need what we have got now. That was the reason for my questioning what is left. I understand now what is left.

**Ms Pilcow:** It clues lawyers and parties into the fact that, if there is a consent order, there is going to be a procedure prescribed for what you have to do. Otherwise, people may be confused as to what they can do in that case and they may think, "Well, maybe the order isn't necessary." The fact is, it will be made and this is the way in which the information will get before the court.

**Mr Mills:** Under subsection 3a(5) you have got the blank support order with no names filled in. Just for my own information, how would you go about getting that? Is it up to the parties to phone in and say, "Look, I've got a job and now you can fill in that," or how does that mechanism come to be when someone does get a job?

**Ms Feldman:** That is one of the ways that the information will come to the director's attention. The director will revisit the file from time to time. The voluntary obligation is first and foremost, and if that is not complied with, then the director is going to be considering not only the support deduction sphere, but also enforcement alternatives, and in the context of looking for enforcement possibilities there are trace-and-locate functions that the office will do. If during that trace-and-locate function the office comes up with an employer that pays regular payments, then the support deduction order that is being made, but was not operable up to that point in time, can be used at that time.

**Mr Mills:** I see. So it saves going back all through the process again. It is on hand, ready for that to happen?

**Ms Feldman:** The payor, bear in mind, still has the option, if he can establish the grounds, to subsequently apply, if a lot of time has passed, for a suspension, or always has the option to apply for a variation if changes of circumstances have been material.

**Mr Mills:** I see.

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**The Chair:** Is there further discussion on Mr Wessenger's motion? All in favour of the amendment on page 8? Opposed? The amendment carries. I am sorry, may I remind Mr Poirier, Mrs Cunningham—Mr Carr, I am not sure with you too—but there is an obligation to vote on every motion in front of us. Should we go through that vote again or what do you wish?

**Mr Mills:** It is going to be the same.

**The Chair:** All in favour of the motion on page 8, Mr Wessenger's amendment? All opposed? Thank you.

Motion agreed to.

**The Chair:** Thank you very much. Any further amendments to section 3?

**Mr Wessenger** moves that subsection 3b(2) of the act, as set out in section 3 of the bill, as printed, be struck out and the following substituted:

"(2) The support deduction order shall be completed and signed by the court at the time the support order is made and shall be entered in the court records immediately after it is signed, even though the support order may not have been settled or signed at that time."

**Mr Wessenger:** I think the only difference in this and what was originally in the act is adding the words "shall be entered," which clarifies the fact that the order is an order of the court. So that was a clarification which makes it clearer, that is all.

**Mr Sorbara:** I think we need some technical assistance here. As I read this amendment, it is saying that the support deduction order shall be completed and signed by the court—that is the support deduction order, this new enforcement tool that we have. "At the time the support order"—which is the underlying authority upon which the support deduction order is made—and "the support deduction order shall be entered into the court records immediately after it is signed, even though the support order may not have been settled or signed at the time." This means that the support deduction order gets completed and registered even though the court has not worked out what the support order is going to be. What happens if there is not a support order, or what happens if, as it turns out, the father is going to be supporting the mother rather than vice versa? What is going on here? How can you put into place the enforcement tool before you even know whether something is going to be enforced? This is rather bizarre.

**Mr Wessenger:** Let's have some clarification here. Once the court makes the order, it is an effective order, but the normal process is, when a court makes an order one of the lawyers drafts the order then submits it to the other lawyer for approval. Normally they are approved. If there is a difficulty about the form of the order, then it goes back to the judge for settling the form of the order. The fact is that many of these orders are going to contain many areas other than just support. They are going to contain areas with respect to custody and access and so forth. What happens many times, knowing the speed at which lawyers work, sometimes it is three months, sometimes it is six months before the lawyers get the order settled. It is important, as far as we are concerned, to have the enforcement procedure in effect immediately. So that is the reason for having the support deduction order filled out by the court and made at the time the order is made.

**Mr Sorbara:** Oh, I see, so the support order is made by the court. The judge says, "Mr Mills, you are going to pay your wife \$500 a month from this moment onward for the next five years. Lawyers, you go and look after the details and write that up appropriately," and the support deduction order is made.



**Mr Wessenger:** That is correct.

**Mr Sorbara:** Now I ask the parliamentary assistant, would you describe this as a section dealing with administration or a section dealing with substantive rights?

**Mr Wessenger:** It is procedural, yes.

**Mr Sorbara:** Would you agree with me that most of the other sections and amendments that we have dealt with are procedural as well?

**Mr Wessenger:** Yes, many of them are procedural.

**Mr Sorbara:** In fact, most of the act is procedural.

**Mr Wessenger:** It is a procedural act.

**Mr Sorbara:** Yes it is, is it not? It does not solve child poverty, but changes procedures. Does this amendment arise from any of the substantive material and indeed the emotive material that we heard during the public hearings?

**Mr Wessenger:** Not from public hearings.

**Mr Sorbara:** Not from public hearings.

**Mr Mills:** I thought it was.

**Mr Sorbara:** I submit to Mr Mills that the score is now 5-1. I get two points in this one. Other than that, I care very little about this section.

**Mr Carr:** I just have one question. Basically you are saying you want to get it in the records, but if the money is not going to get into anybody's hands any quicker, I still do not understand—

**Mr Wessenger:** It is going to get in their hands quicker, because if the support deduction order was not made at the time of the hearing it would have to wait until the other court order was entered, which could be three to six months down the road, so this is very important to this bill so that we can—

**Mr Carr:** But did you not just say that they might not have settled on the amount?

**Mr Wessenger:** No, the amount is settled. The support deduction order cannot be made until the judge has made an order in court as to the amount of the support. Until the judge makes that order, there is no support deduction order.

**Mr Sorbara:** But you agree that in this section and the other section, the document is not settled; the guy does not have a job; there is no income source, but still the support deduction order can be made and filed with SCOE, which is going to be called the child and family support office.

**Mr Wessenger:** That is correct. So long as the support order is made by the court.

**Mr Carr:** And if there is not a job, does he automatically go into arrears then?

**Mr Wessenger:** It depends on whether he makes payments or not. If the person does not have an income source, he may have assets. He has an obligation to pay support to his spouse and for the child, and the person may elect to make payments directly to the enforcement branch, as many people presently do.

**Mr Carr:** And what are some of the reasons it would not be settled and signed then?

**Mr Wessenger:** Why would it not be signed? The judge makes the order in open court; it is taken down by the court reporter and then the normal procedure is, one of the lawyers goes and drafts the order and sends it to the other lawyer.

**Mr Carr:** Sends it out with his fee at the same time.

**Mr Wessenger:** That is right. And I can tell you, having practised law, I know that some lawyers are very quick; they get it done in a week. Others will take six months, sometimes even a year. I hate to say that. It depends on the efficiency of the lawyer. Sometimes one lawyer will drag it and will just not send it back for a particular reason.

Motion agreed to.

**The Chair:** Mr Wessenger moves that subsection 3c(2) of the act, as set out in section 3 of the bill, as printed, be struck out and the following substituted:

“(2) The director shall enforce a support deduction order in the manner, if any, that appears practical to the director and shall pay the amounts collected under the order to the person to whom they are owed.

“(2a) No person other than the director shall enforce a support deduction order.

“(2b) The director shall enforce a support deduction order, subject to any suspension order or variation, until the support order to which it relates is terminated and there are no arrears owing and despite the fact that the support order to which it relates has been withdrawn from the director's office.”

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**Mr Wessenger:** It was put in to clarify that only the director may enforce a support deduction order. That is one purpose of it. The other aspect is, the director is only required to do what is practical under the circumstances to enforce the order, and the director can continue to enforce the order, even after it is terminated, until all arrears are collected. Often an order may be terminated because of the age being attained by the child but there may still be arrears. This will allow the director to continue to collect the arrears.

**Mr Sorbara:** Remember back when we passed the Charter of Rights and Freedoms in Canada, we thought we were taking a great step, we really did. We thought this was a new era of freedom in Canada. As is so often the case, when you do something there is an equal and opposite force in reaction. We passed the Human Rights Code, which says everyone is equal in this province, and then we start discriminating in our legislation. I support employment equity programs but they are clearly discriminatory, let's be frank about that. After the Human Rights Code and with special programs for this and that and the other thing, it is interesting how we do that.

Beware of the incursion of the state. We asked you a while back to consider an amendment that said the director had to treat people equally in terms of service and information and that sort of stuff. Why did we do that? Why did Elston do that? I direct your attention to subsection 3c(2) here: The director shall enforce a support deduction order in the manner that appears practical to her. In a manner

that appears practical to her. The state says, "I've decided that this is practical to me." The current director, of course, is going to be fair and just to everyone, but who the hell knows who the director is going to be next year or the year after or 20 years from now? So this says she or he can do whatever appears practical. If it is practical to collect, she will collect. If it is practical not to collect, she will not collect. If it is practical to send out harassing letters, she will send them out. If it is practical to be kind to the payor but to be snotty to the person who is supposed to receive support, she will do that. We asked you to include a section which says: "Just treat people the same, okay? No matter why they come to the office or no matter for what," because we knew that this section was here to give the director very significant powers.

Again, understand legislative language as you learn your work on this committee. These words are powerful words. It does not say that the director shall abide by regulations established as prescribed. It does not say anything other than, whatever the director feels is practical, is what he or she is going to do. Ask the director if she wants to chime in here and say whether this gives her pretty free rein. I think it does. If anyone wants to make the argument that it does not, I would like to hear that argument.

"No person other than the director shall enforce a support deduction order." That is good public policy and I would support that, because it is the director's business to support it, not some stranger to the cause or the person who gets the support that he is there to enforce. It is only the director and it is only this newly named office, child and family support office, that has the right to enforce these things, so that is good, that clarifies.

When enforcement ends is a pretty interesting little statement here. What it says, in effect, is that you continue to make these automatic deductions until everything, including arrears, has been paid. They do that even if the support order itself has been withdrawn from the director's office. We had a little bit of a discussion of that, I think, during the public hearings or during open comments or at some time. I would like to hear more about that. I do not understand that. If the support order is withdrawn, why do you keep deducting money from the paycheck?

I will put it another way. If you still want to deduct money from the paycheck, how come the support order has been withdrawn? The parliamentary assistant to the Attorney General really did not explain that in any great detail. I am looking at the notes here that have been very kindly provided in this annotated version of Bill 17, and they do not help me either. My colleague Mr Kwinter points out that "until...there are not arrears owing." If that is the case, I would like to see it in law. Put it in the law, but do not say you can continue deducting even if the support order has been withdrawn from the director's office. There is something a little bit fishy about that, and I do not think we have had the straight goods on that, and I invite the parliamentary assistant to clarify that, certainly for me and for any other member of the committee who chooses to ask a question about it.

In summary, I have grave concerns about subsection 3c(2b). I think (2a) is okay, and I really do not like subsec-

tion 3c(2) because the New Democratic Party members of this committee refused to pass our amendment that would have made sure that the director was bound by a substantive duty to treat people equally. This is a draconian power, and he or she does not have to treat people equally. You have just voted that down a few hours ago. I have no concerns about our current director. I do have some concerns about who the government might appoint down the road and whether or not that person would treat people fairly.

**Ms S. Murdock:** I just want to make a couple of points here in terms of subsection 3c(2): "The director shall enforce a support deduction order in the manner, if any, that appears practical...." We had a lot of discussion on that after the submissions from the presenters on the last day, because initially we were looking at the word "feasible," and it was after a lot of discussion and listening to the people that were here that the word "practical" stayed. I think that is important to note, number one. But also there is probably going to be some concern and possible opposition to the idea of the arrears being collected after the support order is concluded. The reality of it is, in my view, and I think that this subsection 3c(2b) says it clearly, that if the support order concludes, for whatever reason—whether the matrimonial home is sold and it no longer exists, or whether the custody is over and it no longer is a problem or whatever, and if there are arrears still having to be paid and are still owed, the support deduction order continues. Just because the support order concludes does not mean that the support deduction order is finished until all moneys that are owed are paid.

I just want to make those two points. I think this is really good, and I am glad that we listened, because it was a concern of mine in terms of feasible-practical. I was very concerned about that. So I am glad to see that you listened to that.

**Mr Carr:** I was just going to talk about the part that says, "until no arrears are owing." One of the fears that I have got is that when we come in with this legislation it may now affect—they were making it tougher—what the judge does. In other words, a judge will say, "Boy, by making a stake on this and giving the support too much, we're never going to get out of the arrears." It seems to me that there can be some type of concern with that, that it is now thrown back in the director's hands. What we might do inadvertently is make it so that, where right now the judge will sometimes say, "This is borderline, but I will give \$100 a month," if we come in with legislation which will talk about arrears—I do not know; maybe there is some way of getting out of it legally. I am not sure. But if we make it that tough, what we might do is, the judge says: "Let me see here, now. If we can't get rid of it until there are no arrears left, maybe I won't give the \$100. Maybe it should only be \$80." I do not know if that fear is just my perception of it, not being a lawyer. But I just feel more comfortable, I guess, having the decision on something like that rest with the judge rather than the director, notwithstanding the fine director we have now.



So that is what concerns me with this: that we are looking at something that basically says it is now up to the director's discretion when the support order will end. Notwithstanding that the order has been terminated, the director will not look on it until all of the arrears are basically cleaned up. I do not know if my fears are valid. It is just the perception of a layman looking at it that what we might be doing is making it more difficult. I do not know if Paul wants to speak on that and maybe help alleviate some of my fears.

1510

**Mr Wessenger:** Sure. First of all, I should say the whole idea of the legislation is not to put the discretion or the determination of the merits of a case in the hands of the enforcement branch. The idea is that that should be in the hands of the court.

Now, on the question of the arrears, the court always has the jurisdiction to make an order bearing the support. As part of that order they can cancel all the arrears if they want to. If they think it is fair that the arrears will be cancelled, they will do it. Courts generally, in fact, cancel arrears that are owing from a long time back when they see no prospect of them being paid. They generally do cancel them if they have not been collected.

**Mr Carr:** But do we not then get into the situation we heard about here, with the long periods of time in the courts, the one-to-two years and the \$35,000 and the \$9,000? On the one hand we are giving the director more power. On the other hand we are saying we want to keep it in the hands of the court. What we have got is a situation where, in order to clean up that and get rid of the arrears, we will now have to go back to the court, whereas presently we might look at it and say, "The support order is stopped," for whatever reason. "We're not going to go back." But now we will have to go back to the court to make sure that the court says there are no arrears. Would that be right?

**Mr Wessenger:** The way it exists right now with our existing system, SCOE does not deal with the question. If there are arrears, SCOE collects them now through garnishment and continues to collect them until they are paid.

**Mr Carr:** Through garnishment, but in the regular they do not.

**Mr Wessenger:** Yes—or other processes. So we collect the arrears now and the enforcement branch would continue to collect them until—there is the possibility the parties, could agree to cancel the arrears. Is that fair to say? The parties themselves could agree to cancel the arrears, in which case there would be no arrears. So they could do it by agreement as distinct from going back to court. So it is not a great problem. And it is not a major agreement. It could be a one-page agreement: an agreement for support is terminated and all arrears are cancelled, in one little page.

**Mr Carr:** Could I ask just one more time why we are putting this in, then, if it does not change anything?

**Mr Wessenger:** It is put in because an order for support may in fact terminate because of the period of time

going by. For instance, if a payor has to pay support for the child until the child reaches the age of 18, the child reaches 18 and the order for support is gone. This allows us to collect the money that is owing, maybe a year back or six months or whatever it is, until they are told not to by either a court order or by an agreement of the parties. You could file an agreement of the parties and that would be recognized by the enforcement branch. It really means the support deduction orders are dealt with the same way as a support order is dealt with now under the existing situation. Right now we continue to collect arrears. It is just continuing on that program, only support deduction applies to the arrears. It is the additional tool.

**Mr Carr:** Putting it in there.

**Mr Wessenger:** It has to be put in to allow the support deduction to continue to be applicable, otherwise it would not be applicable to the arrears.

The other thing I might just reply to is the whole question of the word "practical." The word "practical" is now used in the existing legislation, which was brought in by the previous government. So we are just really continuing the same text that was in the existing legislation. There is no change and we have elected not to change the concept of the original legislation in this regard.

**Mr Carr:** Will the court look at "practical" as a defined term or will they look at it and say, "What the heck do you guys do with it?"

**Mr Wessenger:** I do not know whether it is defined. I do not think it is defined.

**Ms Feldman:** I am not aware of it being considered by the court, except it allows the court to look at the director's actions with respect to each particular case, which is important. So on a case-by-case basis, if whatever the director is doing is disputed by the payor or put into question, then the court would be able to say, "Well, was this practical and why?" It is very hard to actually say what is practical in a general way, because the cases vary and there are different considerations for each individual case filed with the program.

**Mr Carr:** What will happen is that good lawyers like we talked about before will challenge "practical" in the courts. They take a look at it and say, "Well, 'practical,' what does that mean?" I do not think they were right on this one.

**Ms Feldman:** I am not aware in the last three and a half years of "practical" being challenged in the court and being defined in any written reasons.

**Mr Carr:** But if we now give the director more powers, because of putting the word "practical" in there, it might now be challenged. Before it was not, because the director did not have as much authority. Now that we are putting it in, some lawyer somewhere along the line is going to say, "She"—in this case—"has more power as a director, so I am going to challenge 'practical.'"

**Ms Feldman:** It is only meant to ensure consistency between the method of enforcement or the considerations for enforcing a support deduction order and the considerations for enforcing a support order. I suppose it is true that

somebody may, since "practical" now appears a second time, decide to take the director up on it, and that is the way case law evolves and is developed.

**Mr Carr:** But on the other hand, we argued for not putting in closure because we did not want to be challenged with it, and we said, if you remember one of the amendments, "We are not going to put that in there because the director might be challenged on that, on a legal point." So on the one hand you say, "We will not put something in because we do not want to be challenged," and on the other hand we say, "We will put it in there, and there is a good chance we are going to be challenged."

**Mr Wessenger:** Could I just reply to that? My interpretation of what this means, when it appears practical to the director: In effect, that gives the director the discretion to make a decision as to whether or not to enforce a support deduction order, in what manner to support it. It is giving the discretion to the director, basically. It is a discretionary right. It is not likely to be challenged that I can see unless some person felt that the director was making no effort.

**Mr Carr:** But what you just said that before is we do not want to take the power out of the judge's hands, the court's hands. We said the court is the one that should decide. Then on the other hand, we are saying that, yes, when it is to our advantage, we will do that, but in other cases we want to give the director more powers.

**Mr Wessenger:** There is quite a difference. We are talking about relating to the method of how you enforce the collection process, which is in the hands of the enforcement branch. They determine how they enforce. The rights of the parties, that is, how much support the person is obliged to pay, is in the hands of the court.

**Mr Carr:** But I guess the Legislature is—my big fear is that we are the ones that are going to be accountable. The director will not be accountable really. We are the ones who are accountable in terms of what we need to put in there, and I would like to have more control over people that we can throw out every four years or whatever.

**Mr Wessenger:** The government is accountable, but the government gives direction to the director. It is the government of the day that makes the decision, the over-riding decision.

**Mr Carr:** Sometimes governments change more than the people, the directors.

**Mr Wessenger:** It is quite true. A different government could give a somewhat different direction with the whole question of what "practical" means to the director. That is true in practically all legislation; the government directs certain policy with respect to enforcement of its legislation.

**Mr Carr:** Okay. The only point I wanted to make, and the last point, would be, my fear is that I do not like to give more to the director, notwithstanding the fine job that she will probably do.

1520

**Mr Mills:** I would just like to make a point that the government motions continue to reflect upon the input of

the public in so far as the closing of all the possible loopholes, and I think that is commendable, Mr Parliamentary Assistant. Wonderful.

**Mrs Cunningham:** So do we, and we hope you will listen to us when we put our amendments forward.

**Mr Sorbara:** The score is now my team 4 and Gord Mills's team 2.

**Mr Mills:** It is going to be a rout.

**Mr Sorbara:** Whenever it is a draconian measure, Mr Mills unfortunately points out that the government listened; not in the ones where people have asked for a kinder, gentler treatment. I just want to refer to some comments that my friend Mr Carr made, because he made a very good point. The parliamentary assistant, in response to him, said that his interpretation of subsection 2 is that the director can enforce the support deduction order in any manner that the director thinks is practical. What happens if the director thinks it is totally impractical to enforce this support deduction order? The scoundrel is just all over the place, he does this and that, and he is just too hard to track down. What happens to Mr Hampton's statement in the Legislature that these automatic deduction orders are going to be enforced? The truth behind the bill is that they can be enforced or they cannot be enforced.

What happens if the director finds that her budget has just been cut and it is not practical to enforce a whole bunch of support orders of a certain category? The director has the ability to say: "Sorry, we are not enforcing those. You pay directly, sir."

Why do we need this here? After all those speeches by the Attorney General, why should we give so much discretion to the director? Is it for budgetary reasons? Can we hear from the director on this? Why does she need this absolute discretion? I am not just playing politics, I am serious about this. In legal language, this is very broad discretion. Why does she need this amount of discretion? Let the parliamentary assistant answer. Why this much discretion?

**Mr Wessenger:** Any administrative body has to make decisions when it is practical to do something, and the whole thing about this legislation is to catch those 60% of people to make sure they pay.

**Mr Sorbara:** No, no.

**Mr Wessenger:** That is the first point, to establish and collect from 60%, to raise the level from 25% to 60%. That is the first purpose of it, to simplify that process.

**Mr Sorbara:** Oh, my goodness, this is a disaster.

**Mr Wessenger:** The second point is that what is hoped, by simplifying the collection from those 60%, is then to be able to use the resources more effectively; it is the more-difficult-to-collect people. So it is a two-pronged approach, basically.

**Mr Sorbara:** Look, the parliamentary assistant says that we just need this sort of administrative discretion. I tell the parliamentary assistant that that is when we start getting arbitrary government. When you give absolute discretion to government, then you get arbitrary decision-making. Remember in Askov, the court just said, "No



more two years waiting for a trial." That is legal rights, people that are accused of criminal offences. Here we say, "If it is too difficult to enforce, if it is impractical"—notice the choice of the word "practical." Ms Murdock grimaces. Your office is going to have to deal with the letters that come from the director, form letters saying, "The director has determined that it is impractical..." and you have seen these form letters because you have worked in a constituency office. They come in droves from workers' compensation. Here is a discretion, so this is the way the form letter is going to read:

"The director has determined under subsection 2 of section 3c of the act that it is impractical to enforce this support deduction order. We regret to inform you therefore that these payments will not automatically be made to you.

"Yours sincerely,

"The kind and gentle child and family support office."

Do you know what kind of form letters are going to come out if the budget is reduced or if they are having difficulty or if it is a difficult case?

Interjections.

**Mr Sorbara:** No, I am just telling you. I am telling you what you are going to get.

Interjections.

**The Vice-Chair:** Order.

**Mr Wessinger:** The whole idea is to give flexibility of administration. That is the whole point, to give flexibility to use the best approach.

**Mr Sorbara:** Flexibility. Mark my words, you will get a category of cases in which the director under her discretion will determine that it is impractical to enforce, or impractical to enforce fully. You are going to get that. I am not kidding you, this is the experience of government. This is what happens. Look what Howard Hampton said after the Askov case, "There's a whole bunch of criminal cases which it is not practical to prosecute any more." Did he not? Yes?

**Ms S. Murdock:** It was not because it was not practical.

**Mr Sorbara:** We cannot do it any more. We do not have the resources to get there in time. We are going to—

Interjection.

**Mr Sorbara:** Oh Sharon, come on, you know this is going to happen.

**Ms S. Murdock:** Come on, I have read the Askov decision.

**Mr Sorbara:** Right. Well, you know that is what, in practical terms, the Attorney General said, "We're going to let these cases fall by the wayside."

**The Vice-Chair:** Are there any further comments? Mr Carr.

**Mr Carr:** Just to make a point: The court backlog case is a typical example. We have got rent review that is backlogged; we have got WCBs that are backlogged. And that is in effect what the Attorney General said: "With drunk drivers and sexual assault cases and everything else, we cannot prosecute them, so we are going to let them go."

We are saying, with this legislation, that is exactly what the director can do. We are six months behind now. We thought we would have it cleaned up in a year. The computer broke down. We did not get the funds for the computer. We are now six months behind, so, "Everybody, I am sorry." Form letters come out and maybe—we never thought it would happen in the court case, we never thought we would spend all this time prosecuting drunk drivers and then spring them free.

But guess what? Five thousand of them we have done; 20,000 cases have been sprung. We always thought our justice system would be there, and we sprung them. This is the same case, and I think Mr Sorbara made the case probably better than I could. We are looking at basically having the same situation where the director, at his or her discretion, says: "I'm sorry, the system is broken, the Treasurer won't give me enough money. So, I'm sorry, we're not going to enforce it."

**Ms S. Murdock:** It is my turn now.

**The Vice-Chair:** Ms Murdock.

**Mr Sorbara:** You are going to get letters in your constituency office.

**Ms S. Murdock:** Without being interrupted by Mr Sorbara again, I would like to state pretty clearly that the practical aspects of this were considered during the hearing, and the whole intent of this, and all conversations throughout the hearings, were on the practicality of getting it from the payor, not whether it was impractical to do it through the support branch.

The question is not whether they have a backlog and it is impractical for them to do it. The question is, has the payor been paying consistently over the years? When the decision is being made by the director, does she look at it and say: "This person has been paying consistently for 15 years. It is impractical to be proceeding under this act, and we may as well leave the situation as it is?" That is everything that was said through the entire four days of hearings.

To place an entirely different construction on this is really throwing a red herring into these entire proceedings and I resent it, Mr Sorbara, because I think that you are just trying to egg us on, which you are succeeding at. But I am telling you, you are wrong and you are misleading in this entire thing. On the record, Mr Sorbara, it is incorrect and false of you to do that.

Interjections.

1530

**Mr Kwinter:** What we are talking about is really the crux of this whole act and I really have to take exception with the last speaker, because what is really happening, this act is nothing but a collection agency act. That is what it is. It is not what it was supposed to be, and what the Attorney General said it was, to look after child poverty. This is a collection agency act and what it is meant to do is to correct what is considered to be an inefficient system that is now in place. There are now figures ranging from 60% to 80% of those people who have support orders who are not paying them. The purpose of this act is to make it more efficient for the agency to collect.

What we are talking about is not to the point where we are saying, "If it is not practical"—we have that now. If I were to speak to the director now and say: "What's happening with your agency? Why do you have this incredibly high proportion of so-called delinquencies?"—the reason I say "so-called" is that I am not satisfied yet that is the right number, because we keep hearing about partial payments, some that are 35 days in arrears, things of that kind. But notwithstanding that, we are talking about a number that is considered by everybody as being unreasonably high.

What we have to do is try to come up with something that is going to improve the collection proportion. That is really what we are here for. That is all this is doing. I think that if we do not acknowledge that, we are kidding ourselves. That is really what this is. It is a method to make sure that the rate of collection is better than it is now. When you put a provision where it is not practical—one of the problems that we have now is that if I were to ask the director, "Why do you need this legislation?", she would probably say, "Because under the old system it is not practical for me to collect. I don't have the tools, I don't have the authority."

**Ms S. Murdock:** Ask her. Ask her.

**Mr Wessinger:** I am quite prepared to have the director answer this question.

**Mr Kwinter:** Okay, let me just finish before that. What I am suggesting is, I think it negates the act to put that provision in there, to say, "Well, if it isn't practical, then you make the decision." We could have this whole exercise, all of these public hearings and find that we are no better off than we were before, and when we go to question, "Why aren't we any better off than we were before?" "It just wasn't practical."

**Ms S. Murdock:** You are pre-1987, Monte.

**Mr Wessinger:** I think the director would like to have a chance to say something here since we are all talking in the abstract, and we will give the person who is going—

**Mr Sorbara:** Only recently in office.

**Mrs E. Mills:** That is right. The director will say something, although, I have to admit that I am not a lawyer and was not behind all the thinking that went in here. I am going to be repeating something that has been said already, but you have to remember that we are looking at the existing legislation, the old act, and now what we are doing is amending that act and we are looking at consistency.

So you have the original act, where it talked about "shall enforce," and gave the discretion at that time that said, "wherever practical," or, "in whatever manner," and used the word, as well, "practical." In those situations, if we forget deduction orders for a moment, it is not a question, Mr Sorbara, necessarily of resources or whatever. But there comes a point in time, if I—the branch, the director, whatever word you want to use—have the onus of "shall enforce," does that mean that for 15 years I try and locate when all avenues have not been able to bear any fruit? That phraseology allows a policy decision or directive to be given, that after you have taken certain steps you may be able to put it in an inactive file for a moment and come back and activate it later. It is that type of "in any manner,"

and the practicality that is necessary to make a piece of legislation workable.

When you move to this amendment and you have got a deduction order, if I take the example you were using the other day—where this person moves around and goes into various situations—you do need some flexibility. Initially when the support deduction order is given, if the person, he or she, is in employment it will work. But say he or she moves to something else; it is not practical at that point to use support deduction, because this is not a case where there are those regular periodic payments.

Then you move to a situation where they may move into a different type of employment and you now have arrears. You have to be able to make determinations that a garnishment or a seizure may be more appropriate than trying to enforce a deduction order. To complicate it further, it depends where you are in the cycle of an order, if we are talking about one of those circumstances where we are dealing with arrears near the end of a support order for such circumstances.

So I do not think it is a clause that is trying to give discretion to limit what they would do. It is just to allow that practicality to assert itself. I hope I have not muddied the waters further.

**Mr Sorbara:** I think you have muddied the waters somewhat, not completely. But before I respond to that, Mr Chairman, I do want to say to my friend Ms Murdock that in her last comment she suggested that the statements I made were false. Under parliamentary rules generally, members do not accuse other members of making false statements and generally they withdraw that allegation if an allegation is made—

**Ms S. Murdock:** I withdraw the "false" allegation.

**Mr Sorbara:** —and if they do not withdraw them, they are generally asked to leave Parliament. I do not know how it works in committee. I am just new in committee, but I just say that—

Interjection.

**Mr Sorbara:** In Parliament we have a tradition of not calling each other liars or misrepresenters or anything like that, so I encourage the member for Sudbury to withdraw that, but I will leave her to reflect on that.

**Ms S. Murdock:** No, I already withdrew the word "false," Mr Sorbara.

**Mr Sorbara:** Oh, okay, fine, thank you.

**Ms S. Murdock:** But in terms of "misleading" or "red herring," I do not withdraw those.

**Mr Sorbara:** We generally do not accuse others of misleading in a committee. Red herring is all right. It is parliamentary. I do not mind. I have sent up a lot of red herrings during this committee. I think it has been a good exercise. Listen, I am an apprentice on this committee just like several of you.

**Ms S. Murdock:** Oh, you would never know it. I congratulate you.

**Mr Sorbara:** I was telling you the truth. It is my first consideration of a bill clause-by-clause.

**The Chair:** Is Ms Murdock's retraction sufficient?



**Mr Sorbara:** You should be paying attention. This is your role, Mr Chairman, to make sure these things do not happen.

**The Chair:** Mr Sorbara, as you are well aware, the Chair was absent during that exchange.

**Mr Sorbara:** No, the Chair is always in the chair. Mr White was absent.

**The Chair:** This particular Chair was absent. However, is Ms Murdock's retraction sufficient?

**Mr Sorbara:** So long as she has retracted "false" and "misleading" I am comfortable. I just want to keep up the great traditions of this Parliament and this House.

**The Chair:** Yes. Mr Sorbara, would you like to proceed with your point then?

**Mr Sorbara:** Has she withdrawn?

**The Chair:** She did, yes.

**Ms S. Murdock:** I did.

**The Chair:** Now, Mr Sorbara, would you like to proceed with your point then?

**Ms S. Murdock:** If I may have a moment, Mr Chair, I am trying to think of the context that I used the word.

**Mr Mills:** You got wound up.

**Ms S. Murdock:** Yes, I did. I did get wound up.

I certainly had no intention whatsoever of ever calling you—I use the word in quotations—"liar." I do apologize.

**Mr Sorbara:** There is no need to apologize. You just have to withdraw the remark.

**Ms S. Murdock:** I will withdraw it. No, I will apologize too. I have no qualms about doing that. I just think that sometimes the statements made certainly are not intended to take us off into a direction that deflects us from our principal cause. Thank you.

**Mr Sorbara:** They certainly are that. I am not offended at all—

**Mr Kwinter:** Mr Chairman, on a point of information, just so you will know, the very first time I spoke in the House, in 1985, I happened to address the then Treasurer, Miss Stephenson, and accused her of misleading the House. And the wrath of the House just fell on me and I had no idea what I had done.

**Mr Sorbara:** It is quite an experience.

**Mr Kwinter:** But it was, as I say, my very first question in the House. I then learned that it is quite permissible to say "inadvertently misled."

**Ms S. Murdock:** Inadvertently misled? Okay, thank you very much.

**Mr Kwinter:** I just thought I would let you know that.

**Ms S. Murdock:** That is good. It is always good to learn from the pros.

**Mr Sorbara:** Let's get to the substance of the director's remarks, because she argued that she needs this ability to exercise a very broad discretion. My problem is that this is a very broad discretion, and we, as a committee, would have an ability to narrow it. For example, you could say that the director shall enforce a support deduction

order unless there was a particular reason for not doing it, and those reasons can be prescribed by regulation.

**The Chair:** Mr Sorbara, are you moving an amendment here?

**Mr Sorbara:** No, I am not. I am giving a speech.

**The Chair:** The Chair was inadvertently misled into thinking you were making an amendment to the amendment.

**Mr Sorbara:** Drummond, this will go easier if you do not interrupt me so often.

There are all sorts of ways in which to place a statutory discretion in a bill. The point I wanted to make to Ms Murdock is, this is the broadest that a drafter of legislation can come up with without using the words "in the director's absolute discretion." This is, practically speaking, a really broad one.

You could frame the language so that if there were a situation which came within a category of reasons, and generally one would prescribe those reasons by regulation, then the director would be absolved of the duty to enforce the support deduction order.

So the point that I am trying to make in this stupid little speech is that on the one hand, the Attorney General is saying, "We are doing great things," but when you look at the nuts and bolts of the bill, what we see is a bill which may cause the government the very same kinds of problems that the support and custody enforcement office has had for years and years.

Unfortunately, I know about this stuff. The former Attorney General was a good friend of mine and we discussed these very provisions. He said privately to me, "SCOE is in one hell of a mess and we need some more enforcement tools."

But as you create those additional enforcement tools, what you have done is create what I think is far too broad a discretion. I would have preferred to see this section put a greater onus on the director to enforce and then, yes, give her some discretion based on a category of situations prescribed by regulations which absolve her of her responsibility. Because if you do not do that, you run into the same problem of fooling people. Politicians are held in disrespect because we spend too much time fooling people. So I do not support it.

Motion agreed to.

**Mr Morrow:** Mr Chair, can I ask for a 10-minute caucus?

**The Chair:** Mr Morrow is requesting a 10-minute recess. We are recessed until 3:50.

The committee recessed at 1541.

1555

**The Chair:** Can we resume now, please?

**Mr Sorbara:** I am just wondering whether we can have a little discussion about the timetable for the rest of the day. I heard some ugly rumours just as we began the adjournment—and Ms Murdock grimaces—that we will be here until midnight if we do not hurry up.

**Ms S. Murdock:** I never said that.

**Mr Sorbara:** No, no, you did not say that, but you grimaced so I am apprising you of what the rumour is. I hope that is not the case. That would be very unfortunate if the government members were trying to ram this thing through by voting to keep us here until midnight.

I would like to adjourn to see the budget. I would support that. In fact, to tell you the truth, I would like to suggest that we watch the budget and then not come back at 5 o'clock, but just end our work now and set this work over until tomorrow at 10 o'clock and use the time that we have tomorrow that we were going to spend on the 123 motion of the Conservatives on SCOE.

I can assure the members that, as we move through, our party has done most of the talking that we need to do. There are a few other major amendments that we want to speak to but I know that the Progressive Conservatives have some things to say on the motions that they are going to present.

So that would be my motion: that we adjourn now, that we go and watch the budget at 4 o'clock, that we catch up on our homework between 5 and 6 and we get back here tomorrow at 10 o'clock.

**The Chair:** Mr Sorbara moves that we adjourn until 10 o'clock tomorrow morning. Any discussion on that?

**Mr Mills:** I would just like to make one point. I did not intend to sit here tonight, that is for sure, because I have other things to do starting at 6 o'clock and I cannot be here.

**Ms S. Murdock:** Seven o'clock is caucus.

**Mr Mills:** At 6 o'clock we have other things, Sharon. It may be a rumour, but I am sure it is a false one.

**Mr Sorbara:** Like most rumours.

**Ms S. Murdock:** I know that I was going to ask for unanimous consent to watch the budget and then just continue afterwards, but how long is the budget?

**Mr Sorbara:** It will be an hour.

**Ms S. Murdock:** An hour?

**Interjection:** And the analysis.

**Ms S. Murdock:** Then I have no objection to Mr Sorbara's motion.

**The Chair:** Mr Sorbara is suggesting that we not resume after the budget but rather resume at 10 o'clock tomorrow morning.

**Mr Sorbara:** The reason why I do that is because many of you will want to phone your local newspapers in your constituencies and have a comment on the budget, and you should feel free to do that.

**Mr Wessinger:** I will go along with what the committee wants to do. I can see some interest in watching the budget.

**Mrs Mathysen:** I wondered about the time that the budget commenced.

**Ms S. Murdock:** Four o'clock.

**The Chair:** All in favour of adjourning until 10 am tomorrow?

**Ms S. Murdock:** Mr Sorbara, your motion is up.

**Mr Sorbara:** Oh, my God, I have won.

**The Chair:** We are adjourned until 10 o'clock tomorrow morning.

The committee adjourned at 1558.



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## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

**Chair:** White, Drummond (Durham Centre NDP)  
**Vice-Chair:** Morrow, Mark (Wentworth East NDP)  
 Carr, Gary (Oakville South PC)  
 Chiarelli, Robert (Ottawa West L)  
 Fletcher, Derek (Guelph NDP)  
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 Mathysen, Irene (Middlesex NDP)  
 Mills, Gordon (Durham East NDP)  
 Poirier, Jean (Prescott and Russell L)  
 Sorbara, Gregory S. (York Centre L)  
 Wilson, Fred (Frontenac-Addington NDP)  
 Winninger, David (London South NDP)

**Substitutions:**

Cunningham, Dianne E. (London North PC) for Mr Harnick  
 Kwinter, Monte (Wilson Heights L) for Mr Chiarelli  
 Murdock, Sharon (Sudbury NDP) for Mr F. Wilson  
 Sutherland, Kimble (Oxford NDP) for Mr Fletcher  
 Wessinger, Paul (Simcoe Centre NDP) for Mr Winninger

**Also taking part:** Elston, Murray J. (Bruce L)

**Clerk:** Freedman, Lisa

**Staff:**

Revell, Donald, Legislative Counsel  
 Roux, Denis, Legal Advisor, Legislative Counsel







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Wednesday 27 February 1991

## Journal des débats (Hansard)

Le mercredi 27 février 1991

### Standing committee on administration of justice

Child and Family Support  
Statute Law Amendment Act, 1990

### Comité permanent de l'administration de la justice

Loi de 1990 modifiant les lois  
relatives aux obligations  
alimentaires

Chair: Drummond White  
Clerk: Lisa Freedman

Président : Drummond White  
Greffier : Lisa Freedman

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday 27 February 1991

The committee met at 1003 in room 2.

### CHILD AND FAMILY SUPPORT STATUTE LAW AMENDMENT ACT, 1990

### LOI DE 1990 MODIFIANT LES LOIS RELATIVES AUX OBLIGATIONS ALIMENTAIRES

Resuming consideration of Bill 17, An Act to amend the Law related to the Enforcement of Support and Custody Orders.

Reprise de l'étude du projet de loi 17, Loi portant modification des lois relatives à l'exécution d'ordonnances alimentaires et de garde d'enfants.

Section 3:

**The Chair:** The first item I believe is the amendment on page 11.

Mr Carr moves that section 3c of the act, as set out in section 3 of the bill, as printed, be amended by adding the following subsection:

“(3a) The director shall make a reasonable effort to contact an income source before serving the notice in order to ascertain the address to which the income source wishes the notice to be sent.”

Any discussion? Mr Carr, would you like to start?

**Mr Carr:** Yes. Actually my colleague was going to speak to this, but it is fairly simple. I guess it came out of some of the recommendations. Sometimes with large companies—for example, the government of Ontario—there could be different buildings, and different companies have different addresses where payroll goes. Sometimes what may happen is, notwithstanding the time that notice is in, it could go to the wrong office, it could go to the wrong division, or whatever. This would probably alleviate that by allowing the company to say specifically where it would go to, and whom it could be addressed to so that it could expedite matters, particularly in some of the larger companies where just sending it out to the corporation does not necessarily mean it will get there. So we thought this would be something that would alleviate the situation that may occur where, for whatever reason, the court has a particular address and when it gets sent out it comes back. So it is rather simple, I would think.

**Mr Kwinter:** Mr Chairman, I would support this amendment, but I would like to recommend the change of one word. Where it says “the director shall make a reasonable effort to contact an income source,” I think a more appropriate wording would be “to confirm an income source.” You can make an effort to contact them without getting any information and it would seem to me that the intent is really to confirm it as opposed to contacting them.

**The Chair:** Are you suggesting that as a friendly amendment?

**Mr Kwinter:** Yes.

**The Chair:** Okay, if the committee can scratch the word “contact” and supplant it with “confirm.” Mr Wessenger? I am sorry.

**Mr Carr:** The only thing I might add is that the intent is to confirm it. I was just wondering if, when we say “confirm,” whether it might mean that you would not contact them to confirm that.

**The Chair:** I think the members have agreed to amend that to “contact and confirm.” So we are on the second line, “(3a) The director shall make a reasonable effort to contact and confirm an income source...”

**Mr Wessenger:** I would like to speak against the amendment. First of all, the form itself will ask for the payroll office to be specified at the court hearing. In most cases the address will be correct. There would be a great deal of unnecessary work if you are going to confirm the 95% or 90% of them, whatever it is, and it may be 98% that are correct, to try to catch the 2% or so that are not correct. Last, if you put this into the legislation you are increasing the cost of the program considerably.

You are looking at an additional 10 employees and I am surprised that my friends would want to add an additional 10 employees to government service in order to implement this program. Certainly I am very cognizant of the cost aspects of this program and I certainly want to see any program that this government introduces be as efficient as possible and as least costly as possible. Particularly in the present economic circumstances, government has to be lean, and I do not want to see unnecessary expenses added. I think this would add an unnecessary expense to the program.

**Mr Sorbara:** I have a question, then. Let us hear from the parliamentary assistant, or whoever else wants to speak, what systems are in place for confidentiality and integrity of the process. We have heard stories about notices of garnishment going out to employers, where it goes to the wrong employer, it gets opened by someone and gets passed around to 10 other people before it is finally determined that it is the wrong company.

For some people that is very private information. I am not sure if information regarding your separation and your support payments are something that you want to make public, but there are some people who do not want that information to be public. Mr Carr, correct me if I am wrong, but I understand that this little provision—not 10 employees' worth, come on, do not give us that nonsense—is just to ensure that information is kept confidential and to do it in a statutory way.

**Mr Wessenger:** First of all, I might say that the information is provided by the payor to the court. So it is the payor himself who is providing that information. So if there is a mistake made it is the payor making the mistake, not someone else.



**Mr Sorbara:** No, no. I am sorry to interrupt here, but we have established earlier that these things can be filled out in blank, without any employer put in, and the payor, who is really the debtor—

**Mr B. Ward:** On a point of order, are we not supposed to have the debate and the discussion going through the Chair rather than—

**Mr Sorbara:** We have a new guy on the committee, Mr Chair. Actually, it was going quite well. It was really going quite well.

1010

**Mr B. Ward:** I am not familiar with the procedures here, Mr Chairman, so it may take a little while for me—

**The Chair:** It is somewhat looser than in the House. None the less, Mr Wessinger did have the floor.

**Mr Wessinger:** The other aspect: It is the policy right now to send out a notice to the attention of the payroll office. It is always put on every notice that goes out to every employer, "Attention: payroll office."

**Mr Sorbara:** Now, Mr Wessinger, I do not want to interrupt Mr Carr because this is his amendment so I will just ask one more question.

We established here in this committee that under this act a support deduction order can be filled out in blank, that is, without including the name of any employer. Those occasions might arise when that information is unavailable or unknown, or there is no employer. So we have established that in some instances that order, which would still be valid and have the full force and effect of a support deduction order, would come into the possession of the enforcement office, which is no longer going to be called an enforcement office, and some official in the enforcement office could fill in the information.

We established as well, by way of my example, that the employer might be McDonald's, corner of Yonge and Wellesley, and it might go out in that form without the specific information.

I am asking, once again: What measures are you going to put in the law to ensure that this sort of confidential information does not get into the wrong hands? Point to where that exists in the statute now or what amendments you propose, to make that part of it.

Poor Mr Carr and Mr Harnick and Mrs Cunningham do not have the resources that you have to deal with these things. They have put forward a simple amendment which suggests that we do that. What are you doing about it?

**Mr Wessinger:** I would suggest that this is not a matter that should be in legislation but should be considered in policy guidelines for the branch. I am uncertain what the policy guidelines are now with respect to an anonymous tip with respect to a person's place of employment. Perhaps I could be advised as to what the branch policy now is—supposing you get an anonymous tip that someone is working at a place, do you just blindly send out a notice or do you check it?

**Mr Sorbara:** Do you not see what you are saying in that regard?

**The Chair:** Excuse me—

**Mr Sorbara:** Excuse me, I am in the middle of a question, Mr Chairman. Do you not see what you are saying in that regard? What you are telling this committee is that the politicians ought not to worry about the protection of privacy for the individual; we will just leave that to administration. That is offensive to the politician.

There are some things that you want to put specifically in the law, like an automatic deduction order. Yet at the same time you are saying that the interest of the individual in the protection of privacy is not something that I, a parliamentary assistant, or the government or the Attorney General believes needs the protection of statute.

You are a lawyer. We could leave all things to administrative discretion or we could put some things in a statute and say, "I want a law to that effect." I do not want to know what the policy guidelines are. I want to know why you do not want to put it in law.

**Mr Wessinger:** In my opinion, this is something that properly belongs in administrative guidelines and does not belong in legislation.

**Mr Carr:** The only point I was going to make is that we have got some confidential information and I was going to ask for clarification too. When you have information like this, quite often in organizations there is a person who opens all the mail. Personal information that is going out about something like this—is it the policy to have it addressed "Personal, confidential, for payroll people only"?

Because what may happen is that you may have a secretary who receives the mail right at the front desk, opening it and then finding out: "Oh, here's an order. Mr Whoever owes his wife X amount of money." And we are trying to avoid that situation, trying to keep it so that only those who need to do it for payroll purposes—and they look at everything in payroll, how much you are making and so on—keep it as narrow as possible in terms of the number of people who would have access to this private information.

I guess my feeling and our critic's feeling was the same: If we make it as part of the statute rather than leaving it up to the policy, then we are going to be assured that every reasonable means is taken to ensure that the confidence is kept in this very delicate situation.

That was the only point we were trying to make with this. I can see where it would come in to some individual in the company. It gets ripped open, then get distributed, and boom, then it is all over the office about the situation. That could be very, very delicate to a lot of people.

**The Chair:** Were you wanting those concerns to be addressed?

**Mr Carr:** Yes. I would like to have the concerns in there, but I would at least feel better, if this amendment is going to get defeated, that we are going to look at it in another area anyway.

**Ms Feldman:** As Mr Wessinger said earlier, addressing your concern, Mr Carr, if the notice of the support deduction order is specifically addressed to the payroll office then I do not think that anything that can legislatively be done is going to assist the internal practices of those

corporations that might have people who rip open mail regardless of whom it is addressed to.

Second, the support deduction orders, as are garnishments, are public documents, but that does not address your concern specifically.

Third, if in the course of trace-and-locate, which is Mr Sorbara's concern, where we have a blank support deduction order with no income source identified, if in the course of the field's trace-and-locate operation they identify what they think is an employer of a payor, that investigation operationally should go further and get an address to which to send the support deduction order. Again, it would be addressed to payroll office.

Fourth, with 1,200 orders coming in monthly, if there was a legislative blanket provision where confirmation and contact had to be made by a person in office with respect to each of those particular orders, then we have got two potential problems: One, the delay aspect in order to contact income sources on 1,200 orders for the 2% that may be incorrectly addressed; and second, the fact that certain entities will raise problems and disputes at the front end rather than formally after all the information is received and reviewed by them with the package that goes to them with the notice of the support deduction order.

So it really is a very difficult task. It seems like a straightforward provision, but actually it is quite difficult to implement legislatively, although from an operational point of view it should be done. We do try to ensure confidentiality.

**Mr Carr:** Does it go out in anything saying "Personal and confidential" now, or is it just "Payroll"?

**Ms Feldman:** Again, so far as it is a public document, being a court document, I do not believe it says "Personal and confidential" on the envelope.

**Mr Carr:** But of course, if anybody has seen court documents, not too many people go through them. It is very unlikely that people are going to. You can look up everything. Everyone knows what MPPs' salaries are, but a lot of people do not know that because they do not take the time.

So having it in court documents is not going to be as easily accessible in terms of privacy as somebody opening the wrong information and so on. My feeling is that if we had something to say "Personal and confidential for payroll," then it may alleviate some of the problems that are going to happen.

In any corporation the person who opens the mail right at the front as it comes in will then pull it out, read it to ascertain what section it will go to, and immediately that person knows the amount and the circumstances of something that is very personal. As I said before, we obviously cannot get away from the payroll department, but we should be able to get away from having the person opening that document—unfortunately what happens is then it gets spread around. I think that saying that it is in the court document so it is public knowledge, and we should not take any measures to try to keep it confidential, is wrong.

It looks like this particular amendment is going to be defeated since the parliamentary assistant is against it, but I would hope that we would look at some type of measures

to try to make it as confidential as we can. Just like some people are very open about how much they make, they will tell their friends, "I make X amount," for other people that is a very private matter. Since this amendment will not work, I would encourage some type of process where we can try to make it as confidential as possible in something that is very sensitive to a lot of people.

1020

**Mrs E. Mills:** Mr Carr, I would like to respond to that and certainly I think your latter comments are well taken. Clearly, in designing how we communicate with employers, I have no difficulty in saying we will give due consideration or full consideration; even though it says, "Attention payroll," I have no difficulty with saying we will try and look at putting on the envelope, "This contains personal information," or something. I think to go beyond that, we cannot regulate what companies are going to do and how they are going to deal with their information, but we can look at how we send it out, even on the envelope, in addition to "Attention payroll," to have some sort of notification that it contains personal information. I think anything going to payroll departments, whether it be insurance or whatever, does. But we will take that under consideration. I do think this amendment—you have to split it between those new deduction orders coming in, and as Mr Wessinger said earlier, there has to be a responsibility on the payor and the court to get the correct information. When we are getting that information, to then have to check it is an unnecessary step for that 2% or whatever it might be.

In the case Mr Sorbara is talking about, we are talking about later on where you may have had a blanket order that initially did not have an employer, or for whatever reason. It has probably now come about because of those trace-and-locate functions, and clearly in those functions we do the best we can to confirm whatever tip we have been given and however we gather the information to make sure it is valid.

**Mr Kwinter:** I just wanted to comment that this amendment serves two purposes: one is the one that Mr Carr referred to, that even when it goes to the place, to make sure it goes to the right place. My concern was the issue that the director was just talking about, that you could have a situation, to get back to the example that Mr Sorbara used—to talk about the various machinations that could take place with someone who is moving around; that a spouse of a payee finds out second-hand, someone calls her and says, "You know what, I just saw your ex-husband and he is working at McDonald's." She says, "No kidding," and she goes down and tries to find him but does not, then contacts SCOE and says, "This is where my husband is." Whether he is there or not, who knows, but she has been told that and she is the one who is making the call. It would seem to me that it was at that point that there should be some provision whereby that particular source could be confirmed before that notice was sent out.

**Mrs E. Mills:** That is what happens, Mr Kwinter. I was just wishing I had brought some statistics up here because, since we have been really tackling the backlog,



we have been making a particular attempt to tackle what we call the "hot tips" from whoever calls into the central inquiry. Those are given as full an investigation as we can possibly give before we take any action. Where they have said, "We think he may be working at, because so-and-so has told me," certainly that is confirmed before any other action is taken. But the hot tips, about 90% of the tips, as we call them, that we get, do come from the recipient or the creditor, calling in information which we then have to try and follow up on, but we do not act on ambiguous information. You cannot go and seek garnishment unless you are sure you have an employer and an address and all that kind of stuff.

**Mr Elston:** This, perhaps, is a good place for me to intervene about some concerns with the legislation dealing with protection of privacy. As everyone here knows, there is a committee of legislators who are now interviewing people for the position of commissioner, but one of the incidents that was conveyed to us was an incident with SCOE where a letter had been sent to an employer, a major manufacturer. The letter had been addressed from SCOE to the individual at his workplace, except the workplace is pretty large; it is pretty decentralized, and before it finally found the person, it was opened and viewed by no less than 10 or 12 people. They had the right address; they had the right employer, but all these people who opened the letter and reviewed it to try and find out where this person was, know about the affairs of this particular individual. One of the concerns we had when people made presentations here was to guard against the incidents of unwarranted access to the privacy of either the payor or the payee, but in this case it was the payor. I know that issue is here again raised and I would want this bill to take every step possible to make sure that as few people as possible actually know the details of people's individual human lives.

I was responsible for the Freedom of Information and Protection of Privacy Act, and I think the next big series of issues is going to be the protection of privacy, particularly with this bill. It even becomes more crucial because, to be quite blunt, we are going to intervene in voluntary situations now where people need not have known anything about this. Unless you tighten the sections up to make sure that you are not going out to say, "X owes Y money because of a marital breakdown," we are going to be into some very big problems and conflicts with the protection of privacy act.

Just in the manner of supporting the tightening up of the act, and my final question would be: Has this received the good housekeeping seal of approval from the protection of privacy section in the Office of the Information and Privacy Commissioner, because this will, I think, cause lots of interventions by them.

**Mr Wessenger:** Okay. They have looked at it and they have suggested no amendments, I am advised.

**Mr Elston:** That is different, though. That is different from them saying that they approve of it, rather than having said they did not suggest any amendments. Their role is to bring forth issues. This was an issue that I found out about, an intervention by SCOE with respect to this former act in

some of the practices. I suspect that they would probably have issued a warning that you had better make sure this is tight. I just leave this as a tightening-up process.

**Mr Wessenger:** I think in that former situation the practice was not to put "Payroll department" on the notice back at that stage, and as a result of that case they changed the policy and put "Payroll department" on, so there was an administrative change in response to that situation as I understand. I am sure the present director is very cognizant of the whole question of privacy and certainly she is aware of the need to preserve privacy.

**Mr Elston:** Are we sure, then, that this is not going to violate the protection of privacy act?

**Mr Wessenger:** We certainly have no comments that it is going to violate it.

**Mr Sorbara:** Well, then, why do we not just join hands and pass this amendment? Is this something that is so offensive to the government party? If you listen to the testimony of the director, she says that basically she does this anyway.

**Mr Wessenger:** No, that is not correct. She does it in the situation where there is a hot tip, she does not do it in the initial orders.

**Mr Sorbara:** My understanding was that she said they take reasonable effort to contact the income source before the notice is served.

**Mr Wessenger:** That is in the case of a hot tip, not in the case of an initial notice where you are aware of the other information—

**Mr Sorbara:** What about inappropriate cases, or in cases where the payor's right to privacy might be infringed? What could happen if you passed this and then the director breached the duty? Not very much. Do you know what would happen? The director might get sued and if there were real damages then the director might have to pay. But I ask Mr Wessenger, who is also a lawyer, what level might those damages be. What are we talking about? Is the government so at risk? Is it so worried about its own competence that it would not want to set itself at risk? What is the problem here? Why are you so opposed to a simple little item that adds a little bit more security to the politicians that an individual's right to privacy will be protected? I ask the parliamentary assistant, who are you protecting? What is the problem?

**Mr Wessenger:** I think I have indicated that I felt it should be an administrative matter, as a matter of policy—

**Mr Sorbara:** You know there were politicians who used to say that about minimum wage and the rights in the workplace and rights to bargain collectively. That should be administrative. Leave it to—

**Mr Wessenger:** In addition, I do not want to impose additional costs on this program that I feel are unnecessary.

**Mr Sorbara:** Oh my goodness. It just shows again that this is a right-wing reactionary bill.

1030

**Mrs Cunningham:** I thought I came here this morning to witness some putting together of the minds. The principle

behind this amendment is the principle behind the amendments that the government put forth, and I consider that this one was just one that you missed, given your philosophy. You missed it and we helped you out. You will see that philosophy behind every amendment that we put forth, and if there is not a good reason coming from the government for not supporting all of the amendments that we put forth; based on one principle, the same principle that you have based many of your amendments on, which is public input from very important groups who took the time to tell you where you could fix up a very complicated piece of legislation that is difficult to read, difficult to follow—that is why some of us are sitting here, to help out a little bit.

If you give me a good reason for not supporting this, Mr Chairman, I would feel much better. So far, as I have chatted with my colleague, I have not heard one. In fact, the reason for not supporting it is inconsistent in all the reasons you asked us to support your amendments. Do not use the word “administrator” around me because I think we have a lot of administrative pieces and amendments that have been put forward.

**The Chair:** Mrs Cunningham, they are not my amendments, but rather the government’s amendments Mr Wessenger is representing.

**Mrs Cunningham:** Mr Chairman, if I have to shout at somebody, I would rather shout at you. You are not nearly as sensitive as others in this room. Therefore, bear with me.

**Mr Wessenger:** The one thing that members should remember is that the director is subject to the privacy and information act.

**Mrs Cunningham:** That is correct. I am not concerned about that. If you take a look at the choice of words, “reasonable effort.” In the education program perhaps it would be helpful if in fact—and I am assuming there will be an education program a very important education program that goes along with this legislation, for a number of reasons. First of all, everybody asked for it; everybody feels that one has to be enlightened around why the government feels that it is necessary to bring forth such a bill, and certainly the principles and the purposes for the director and her staff across the province as to why these amendments were even put. This one is put because the multibranch corporations—in this case, the Canadian Bankers’ Association—brought to our attention a very real concern, that a bank’s or corporation’s notice of support deduction order must be mailed to a specific address, such as payroll division, head office.

This amendment is basically to take a look at, where appropriate, those kinds of contacts that should be clarified. I do not feel that, because this amendment is being enforced, everybody has to be phoned, but I think it is an amendment in good faith letting the director know that we expect especially—and this could be part of the education program where we get large corporate offices involved, and there are many of them—that reasonable effort to contact an income source before serving the notice. It is a direction in legislation, and there are other directions in this legislation which the government has put forth which we supported. That is why it says “a reasonable effort” and that is

why we did not go into more work in being more specific around the request on page 3 of the Legislative Research Service, which I am sure everybody is following. After all, research gives us information so we can use it wisely.

**Mr Wessenger:** I think there is some misapprehension here. This would bind every case and require a telephone contact in every case.

**Mrs Cunningham:** Why? What says every case? I certainly do not want everybody to be contacted?

**Mr Wessenger:** That is certainly the way I interpret it as a lawyer.

**Mrs Cunningham:** Fix it for me, I do not want every case. If you are the lawyer, I am here to have my amendment improved upon by the research or by the legislative people. If you do not like the amendment because it is not helpful, tell me it is not helpful.

**Mr Wessenger:** I mean, I—

**Mrs Cunningham:** Fix it.

**Mr Wessenger:** I can make a suggestion.

**Mrs Cunningham:** Good.

**Mr Sorbara:** Okay, propose an amendment. Go further. Tell us what you want.

**Mrs Cunningham:** Help us.

**Mr Wessenger:** “Where the director believes it necessary.”

**Mrs Cunningham:** Fine. That is very positive. Do you want me to change my wording, Mr Chairman. What makes this whole thing simple?

**The Chair:** Are we changing the amendment then?

**Mrs Cunningham:** Yes.

**The Chair:** To?

**Mrs Cunningham:** I will take your guidance on that, Mr Chairman.

**The Chair:** Mr Wessenger’s guidance? To?

**Mr Wessenger:** Add the words “where the director believes—” Let legislative counsel do it for us to make sure it is done properly. I think that it is a—

**The Chair:** I would suggest that would be incorporated in the amendment, seeing that it is the same party putting them both forward.

**Mr Wessenger:** No, it is not mine. I am just agreeing.

**The Chair:** Can we put the section down temporarily?

**Mrs Cunningham:** I do not even care who gets the credit for it as long as it gets in there. Do you want the credit, Mark? Mark is going to do it. He has been sitting here long enough to get the credit for something, Mr Chairman.

**The Chair:** May we stand this section down so that we can get the proper wording and bring it back when that wording is available?

**Mrs Cunningham:** Sure.

**Mr Morrow:** Can I move that this section be stood down?



**The Chair:** Unanimous consent? Received. Thank you. Moving on to—the clerk informs me we should be looking at page 13 before page 12.

**Mr Wessenger:** Why?

**The Chair:** If you would like the rationale, I am sure the staff would be willing to provide it.

**Clerk of the Committee:** The reason why we are doing page 13 before page 12 is for the simple reason that if page 13 passes, there is no need for page 12 because page 13 incorporates the amendment that is on page 12. So we will do 13 first, and if it does not pass we will then do 12.

**Mr Sorbara:** Go ahead, Dianne, this is your baby.

**The Chair:** Mrs Cunningham.

**Mr Wessenger:** May I just ask a question here? It seems that certainly there is an inconsistency because one is seven days and the other, in effect, could be nine days, it could be 10 days because if you will notice the other one says “excluding Saturdays, Sundays and holidays.” So, there is, in effect, a difference; they are contradictory.

**Mrs Cunningham:** First of all, I think it is a good idea in the interests of democracy that we should be allowed to introduce our motion first.

**The Chair:** I do not think there needs to be further discussion on this point. The clerk confirmed that it should be page 13 first. So, if we could proceed with that amendment. Mrs Cunningham.

**Mrs Cunningham:** All right. Mr Chairman, may I beg the indulgence of the committee in introducing this one, because quite frankly I think the government and our—

**The Chair:** Could you move before you speak?

**Mrs Cunningham:** Okay, I will.

**The Chair:** Mrs Cunningham moves that subsection 3c(4) of the act, as set out in section 3 of the bill, as printed, be struck out and the following substituted:

“(4) The notice shall be deemed to have been served on the individual, corporation or other entity to whom it was mailed on the seventh day following mailing, excluding Saturdays, Sundays and holidays, unless the contrary is shown.”

**Mrs Cunningham:** In the interests of getting through this bill today and being positive, I feel the government was probably trying, in response to public input again—and this was the Canadian Federation of Independent Business, which I thought was telling us that the time frame was too short and it was trying to lengthen it—to be specific in excluding Saturdays, Sundays and holidays. Possibly based on my own experience in school boards and in my work as a social worker, working days were always a problem. Some people work on Saturdays and Sundays and working days were always a problem, so that is why we were trying to be very specific, given the kinds of people who are going to be reading this legislation and their state of mind, many of the people. We were trying to be very clear.

Again, I would take some advice, if I may, from the parliamentary assistant. We are both trying to achieve the same thing. Perhaps he would like to tell us what he thinks

of this particular motion. Both of us, I think, are trying to extend the time frame, and I was trying to be very specific here because people do get mixed up on what “working days” means, and so I would like the advice of—

**Mr Wessenger:** If I just might comment on that—

**Mrs Cunningham:** Is this going to be a pleasant comment?

1040

**Mr Wessenger:** Yes, this will be a pleasant comment. The reason for us choosing a straight seven days was basically to more or less comply with what is in the rules of civil procedure. So the seven days basically comply with the rules of procedure which makes it standard throughout what is deemed in court proceedings. So we certainly think it is a good sense of trying to make this conform to the rules of procedure.

The other aspect is that the word “holiday” creates some ambiguity in the situation. What is a holiday and what is not? So that is the reason why we said seven days.

**Mr Sorbara:** “Holiday” is a special definition. The Retail Business Holidays Act defines it.

**Mr Wessenger:** The basic reason I would say then is the whole question that if it is reasonable in the rules of practice and has been worked out by the Law Society of Upper Canada, it would seem a reasonable test for us to adopt the same standard.

**Mr Carr:** That is when the postal system used to work.

**Mr Wessenger:** I think by changing from five to seven—and the other aspect we should remember is that it has the provision that unless the contrary is shown, it is deemed to be served.

It is very simple to show the contrary because all a person has to say is, “I didn’t receive it,” and the contrary is shown. We are deeming it to be made. The only time it comes into effect is when somebody is not able to say what date he received the notice. But they have the right to get up and say and then their word has to be accepted, basically, unless the court has some reason to think they are not telling the truth.

**Mr Carr:** So there must be an “unless the contrary is shown” portion—

**Mr Wessenger:** It is in there. It is right in there now, “unless the contrary is shown.” So a person is not going to be bound by something if there is a delay in the mail. Most businesses do have date stamps, for instance.

**Mr Sorbara:** We have a problem here, and that is that the parliamentary assistant to the Attorney General is not reading his notes. He should read the notes before he makes the speeches.

If he turns to page 17 of the annotated history of Bill 17, he will notice that, at least according to his officials, the five-day rule is consistent with the rules of civil procedure, not the seven-day rule. In fact, I will read it for him. It says, “The amendment providing for the five-day rule,” the fifth day following mailing, it says, “is consistent with the rules of civil procedure, which provide that where a

document is served by mail, service is effective on the fifth day after the document is mailed.”

Then the government is going to propose an amendment as soon as Mrs Cunningham’s amendment is defeated—

**Mrs Cunningham:** Oh, Mr Sorbara.

**Mr Sorbara:** —and I am going to vote against it; I want to tell her that right now—saying that they are proposing to move to the seventh day. The reason is that this amendment was made in response to suggestions from business groups which indicated that a five-day deemed-service rule was unrealistic.

Let me tell my friend the parliamentary assistant that the argument you first made is a good one. We ought not to burden the legal community, and their clients specifically, with all sorts of different rules in respect of notice and service rules. It is wrong. Some judge will, when he sees this, get very angry and rule that service has been made notwithstanding that, because the tradition had been five days. He will find some technical rule to get over the seven-day rule. We should not put seven days here because we want to placate some group that came to a committee. If the Attorney General or his parliamentary assistant wants to change the rules of civil procedure and wants to consult about it, that would be a good thing. Maybe seven days is a different standard that we should be working towards. But please, let’s not have a seven-day rule for SCOE and a five-day rule for statements of claim and a six-day rule for writs of possession under the Landlord and Tenant Act. It is not good public policy. This is not partisan; I just want to make a little plea here for consistency in the way in which we provide for these sorts of things. Is that not reasonable?

**Mr Wessinger:** Could I ask that we have a three-minute recess so that I can consult with—

**Ms Pilcow:** I could just answer that question. In fact, the rules of civil procedure provide for five days of deemed service, but the rules also provide a very long list of rules, as you may recall, setting out how you calculate time. One of those rules is that holidays and weekends are not counted in those five days, so rather than set out all of the rules that are set out in the rules of civil procedure in this act, we have made it more or less consistent, because five days not including weekends usually will be seven days.

**Mr Sorbara:** I just say to counsel then, we could change subsection 3c(4) to read, “Five days consistent with the rules of civil procedure,” or, “shall be the same as those contained in the rules of civil procedure.”

**Ms Pilcow:** Except that this makes it all contained in one act. Nobody has to look to another book. In fact, the times will be almost the same as we could make them and keeping them all contained in one document.

**Mr Sorbara:** Okay. But then I say to you that your annotated document—

**The Chair:** We had a request for a short recess.

**Mrs Cunningham:** We are probably fine talking out loud because I am here to fill up a chair and I am listening with interest.

**Mr Sorbara:** But I just want to say that the annotated document—and I am going to defer to my colleague Mr Kwinter in a second—is wrong because you say that we are doing this because it is consistent with the rules of civil procedure. I really am trying to make an argument here for consistency. It is in the best interest not of the legal group—I am not here to protect the legal profession—but their clients who rely on this.

**Ms Pilcow:** I apologize if the annotation is not correct. I should have set out that the way it is calculated under the rules is different. That, I guess, escaped us and that is why we decided to change it. So that is my mistake.

**Mr Wessinger:** I think basically the position is that, rather than referring to the rules of practice in the legislation—that would cause more complexity to employers if you had that situation of having them refer to the rules of practice—what counsel have suggested is using the seven-day period, which would normally be the same as the rules of practice. There might occasionally be an exception, but it would normally be the rules of practice. So that is the reason for the seven days. I think we should be as consistent as possible with this question of time periods because it is certainly desirable to have as close to consistency as we can have.

**Mrs Cunningham:** On that point I appreciated the fact that the government put their motion forth to the seven days because I think they were responding to what was a very good suggestion as it came before us. I am not here to make changes because somebody comes before a committee every time, but I think we thoughtfully went through what we thought was reasonable and helpful. This one, we thought, was reasonable and helpful. So I thank the government for responding as well.

All we wanted was that people did not have to refer to other documents to spell out the Saturdays, and in fact we had some help from the legislative counsel in doing so. That was the only reason we put those words in, because we thought it would be very clear and people would not have to refer to another document, the rules of practice. So you are saying really, you do not think it is necessary to put the Saturdays, Sundays and holidays in.

**Mr Wessinger:** I do not think it is necessary.

**Mrs Cunningham:** Then it is not more helpful for people who are using this legislation.

**Mr Wessinger:** I think it would be less helpful for them and create more confusion. I think it is easier for them to have a set—

**Mrs Cunningham:** And we were trying to do the very opposite.

**Mr Wessinger:** —a set time period.

**Mrs Cunningham:** We were trying to make it easier by letting them know—

**Mr Wessinger:** I think it is easier for people if they do not have to interpret something. If it just says X days then it is much easier for them to interpret. I think our amendment does have the aspect of being as close as we can be to—



**Mrs Cunningham:** I do not have a problem with that. I was trying to even be more specific.

**Mr Wessinger:** Right. Yes, I understand that.

**The Chair:** Are you suggesting that you are withdrawing your amendment in favour of the government—

**Mrs Cunningham:** No, I will not withdraw it, because although we disagree here to the extent that we are both trying to do the same thing, I happen, from a layman's point of view, to think that this is clearer.

**The Chair:** So you prefer your own.

**Mrs Cunningham:** So I will let our amendment stand. But Mr Sorbara has his hand up and maybe he has something that will help us along here.

**Mr Sorbara:** This is not a section to benefit employers or employees. This is a lawyer's section.

**Mrs Cunningham:** Oh, that is too bad.

**Mr Sorbara:** No. Dianne, just—

**Mrs Cunningham:** Oh, you have just ruined my day.

**Mr Sorbara:** —just to explain it to you: If there is any question about when the employer actually received the notice, the law has to establish some sort of deeming provision to say, "You are deemed to have received it six days or five days or 100 days after I put it in the mail." It is only used in the context of a court battle as to whether or not the person actually knew of it. I am sorry that laws have to deal with these sorts of things, but they do. And to create yet another fallacy—

**Mrs Cunningham:** I do not worry about laws; I worry about lawyers.

1050

**Mr Sorbara:** So do I. But it is so silly to have one notice provision for a notice under SCOE and another notice provision if you are serving a statement of claim, as if somehow you give it to a different postal service. Consistency would be that if you drop a legal document in the mail and you are going to have some sort of deeming provision, it should be the same for whatever document it is. If the document is really important you cannot say, "We'll pretend that the post office got it there in a day," and if it is not important, "Well, 14 days." It is the same post office. They will be as efficient or as inefficient as the government of Canada determines that they are going to be, based on the level of service that they want to provide. But why in the world would we set up a different notice provision for this support deduction order than we do for any other documents that lawyers or courts mail or file?

I do not care. I promise not to speak on this issue any more. But I think it is the height of stupidity to say that we will have a different rule for these than the ones that we will have for a statement of claim in a suit.

**Mrs Cunningham:** On the statement that Mr Sorbara just made, it is one of the main reasons that I got myself elected. And sometimes just because we have rules of practice that have been there for long periods of time, there has to be slow and careful progress in the world to change. I do not like the rules of practice because I do not think, in general, they serve the purpose of the public, given the

state of the mail in Canada. Okay? I do not think it is long enough any more. So I wish we could change the rules of practice with this bill but we cannot. So we will make one giant leap forward and change five days to seven days because it makes good sense for families.

I also disagree with Mr Sorbara in that I know in my work—and I am not talking about my former life when I used to work with families and help them a lot—I was not hopefully involved in any legal cases if I could help it, because it was a waste of emotional energy and time that families had to support each other. So we stayed away from the courts as far as possible. That is why you hear me talk about supervised access a lot. But we still had to know the rules, and laypersons like myself had to be able to read this legislation and advise the mothers and the fathers and the children who came to me. So I do not feel it is just for people who are in dispute—

**Mr Sorbara:** This section is just for lawyers—

**Mrs Cunningham:** I do not agree with you—

**Mr Sorbara:** Sorry, but it is—

**Mrs Cunningham:** I think it is not just for lawyers. In fact I have proof that it is not for lawyers—

**Mr Sorbara:** Prove it.

**Mrs Cunningham:** I will prove it. I will prove to you, Mr Sorbara, through the Chair, with respect, that in fact the CFIB, which is the Canadian Federation of Independent Business, I believe, felt it was important for them in administering this act as small business persons that they make this change, and therefore—

**Mr Sorbara:** So they could legally protect themselves.

**Mrs Cunningham:** Well, fine. They could be fined if they do not comply with this legislation by not either receiving something or working within a time frame. So this should be a piece of legislation that everybody understands and uses, and not just lawyers. In fact I wish we did not have any lawyers who had to use it, but you know my feelings on that.

Having said that, Mr Chairman, we have to come to a conclusion here. I still think that our amendment expands upon the seven days and is more helpful to people as well as lawyers in serving this legislation. I understand and I appreciate the conversation we have had here this morning with the government. I can tell you where this is going but I still want it to stand, because I think we were trying to make a helpful suggestion to make the act more useful for all of those concerned. So I would ask, Mr Chairman, that you deal with it in any way you see fit.

**Mr Carr:** The only point I was going to make, in defence of our postal system, is that the big problem is that we are talking about expanding this. Ten years ago they were not moving the volumes that they are moving now. So quite frankly probably five days would have done it. As volumes increase, as they are probably daily now, seven may need to be the situation. It is not really a reflection even on the post office. It is just that they are now moving the volumes of mail that have increased. Quite frankly anybody who has followed it realizes that on-time delivery

has been expanded because of the large volumes. As Dianne, my colleague, has said, we have a situation where small businesses are saying to us, the Canadian Federation of Independent Business, that they need more time because of the present situation.

The reality is that it does not get into their hands. So whether we spell it out with the holidays, which I think—again as a layman—makes it very simple for myself to understand, or whether we lay it out with the other amendment in just legal terms, is not the point. But I think it needs to be expanded and I do not think it is just for lawyers and, quite frankly, I disagree when we say, “Let’s keep everything the same,” because that time is not working. At some point, what we should do is go back into some of the other legislation and make the necessary changes. We cannot do that, but we can change this.

**The Chair:** Mr Sorbara, with your indulgence, Mr Wessenger has what he hopes to be a friendly amendment to the amendment Mrs Cunningham put forth.

**Mr Sorbara:** I do not want to indulge him right now, and I was next on the list. I just want to put one question for legislative counsel and Mr Wessenger to help me and my caucus determine how to vote. There are three proposals, really, on the table.

**The Chair:** Legislative counsel is not here.

**Mr Sorbara:** There are three possibilities on the table. One is that we have the five-day rule as originally contained in the bill. The second is Mrs Cunningham’s amendment which includes a reference to Saturdays, Sundays and holidays; and then there is a government amendment which is the same as in the bill but changes five to seven. I would like to know, for our purposes, which is closest to the rules of civil procedure?

**Mr Wessenger:** I think probably the seven days is closer, but I have another alternative to throw to Mrs Cunningham, if she is willing to consider it, which would make it even closer to the rules of practice. That would be to take out the seventh day in her amendment and make it “the fifth day following mailing, excluding Saturdays, Sundays and statutory holidays.”

**Mr Morrow:** Could you say that again, Mr Wessenger?

**Mr Wessenger:** “The notice shall be deemed to have been served on the individual, corporation or other entity to whom it was mailed on the fifth day following mailing, excluding Saturdays, Sundays and statutory holidays, unless the contrary is shown.” That would be almost exactly as it is in the rules of practice.

**Mr Sorbara:** I would like a ruling from legislative counsel.

**The Chair:** And then your amendment would follow.

**Mr Wessenger:** No, then our amendment would not be necessary.

**The Chair:** Okay.

**Mrs Cunningham:** That is fine.

**Mr Wessenger:** If you would like to make that change from the seventh to the fifth we certainly could accept that.

**Mr Sorbara:** I do not have any objection if that is part of the amendment. We will give unanimous consent. It does not really matter what amendment is on the table.

I guess perhaps legislative counsel can argue this. We have got three alternatives for this deemed service provision. One is what was contained in the bill, and that is a five-day provision, five days following mailing. The second is Dianne Cunningham’s original amendment, which has a seven-day point following mailing, excluding Saturdays, Sundays and holidays. The third is the government’s proposed amendment, which is the same as what is in the bill except seven days rather than five. Which is closest, Don, to the rules of civil procedure, the rules of practice?

**Mr Revell:** Unfortunately, Mr Sorbara, I am not sure which one is closest. I have not got the rules of practice with me. We could do that research for you. I believe that it is more likely that there may be other people at this table who go to court more often than I do, which is exactly never, and—

**Mrs Cunningham:** That is why you are so helpful.

**Mr Sorbara:** Then let me just ask one other question of the people who are here and know this act. Are there any other deemed service provisions in this act? There are?

**Ms Pilcow:** Three of them, three identical to this one.

**Mr Sorbara:** Identical to what?

**Ms Pilcow:** To the one that is proposed. There are three places in which there is a deemed service rule of five days.

**Mr Sorbara:** Of five days?

**Ms Pilcow:** Yes. This proposal would change it to seven.

**Mr Sorbara:** Can we make sure that if we change one to seven we change them all to seven? That takes more amendments than what we have got on the table.

**Ms Pilcow:** They are coming up in the appropriate place.

**Mrs Cunningham:** They are there, actually, already.

**Mr Sorbara:** Okay, so just let me ask one more question. What do you want to have here?

1100

**Mrs Cunningham:** I think your question is very important and that would satisfy me. I would rather see the days spelled out, for the reasons that I have given, obviously, that the government is saying, “That’s probably a good idea,” and, “That is fine if we can make it work.” On the other hand, I do have respect for your word “silly” and I do not want any amendment to appear “silly.” I think that is why you asked the question.

**Mr Sorbara:** Yes.

**Mrs Cunningham:** Therefore, either we wait and find out the answer to your question, which is fine by me, because I think all of us want the best piece of legislation as far as possible at the end of the day—so I am happy to do whatever you would recommend on this one.

**Mr Wessenger:** My own personal recommendation is that the seven days is simpler and easier to understand, a straight seven days without the holidays. The second position



of making it the fifth day excluding holidays does make it comply with the rules of practice, but it does detract, I think, from making it specific and certain. It is simpler to just say seven days. And since—unless the contrary is shown—there is this provision in the act, it does not really prejudice the employers. Seven days is a reasonable period to deem, because he can always say he did not receive it that day, or received it later.

**Mrs Cunningham:** Yes, which he is going to say anyway. That question was raised by everybody, so people want to get off the hook.

**Mr Wessinger:** My actual preference would be for the straight seven days, but I—

**Mrs Cunningham:** But you do not look particularly unhappy on this one, under any circumstances.

**Mr Wessinger:** I can say the fifth day following, it does not—

**Mrs Cunningham:** So we will go for the amendment, “the fifth.” We will accept that plus the inclusion of the word “statutory”—

**Mr Wessinger:** Okay.

**Mrs Cunningham:** I would ask that those words be changed with unanimous consent.

**The Chair:** Mr Morrow first and then Mr Kwinter.

**Mr Morrow:** With the indulgence of the committee—

**Mr Sorbara:** Denied.

**Interjection:** Watch this, Mr Sorbara.

**Mr Morrow:** Thank you, Mr Sorbara. I would ask that we stand this one down at the moment with the government additions to Mrs Cunningham’s amendment. Is that fair?

**Mrs Cunningham:** As long as Mr Wessinger does not speak about this any more, because he should only have one vote. He has got all kinds of clout where he sits. Do not talk about this one over lunch.

Interjections.

**Mr Kwinter:** Mr Chairman, before we stand it down, could I just make a comment?

**The Chair:** Legislative counsel has a point to make.

**Mr Revell:** I am afraid, because of being called out into the corridor to discuss other matters, I am rather at sea on the particular motion that we are dealing with. We have Mrs Cunningham’s motion in front of us, that is the one I am looking at with the word “seventh” crossed off and the word “fifth” put in. Now I am hearing the word “statutory” for the first time, that we want to put the word “statutory” in before the word “holidays.”

**Mrs Cunningham:** I was advised to do that.

**Mr Revell:** I would like to say that I am not sure that that is helpful, because there is no such thing as a statutory holiday. There is a list of holidays—there is an expression “holiday” which is defined in the Interpretation Act, which says, “In every statute unless the contrary intention appears, the word ‘holiday’ means”—

**Mr Wessinger:** We will withdraw “statutory” from it then.

**The Chair:** Mrs Cunningham.

**Mrs Cunningham:** Absolutely.

**The Chair:** So “statutory” is withdrawn.

**Mrs Cunningham:** It would be anyway.

**Mr Kwinter:** I have a problem with this whole discussion now that it has developed to where it is. It would seem to me that the purpose of the amendments, both Mrs Cunningham’s amendment and the government amendment, was to address the concern that was expressed to this committee that those people who are involved require more time. Now it would seem to me that if the rules of practice state that five days is the period of time for deemed notice—and from what you have said earlier, five days acknowledges the fact that it does not include holidays—if you make it back to five days and just spell out the holidays, it is exactly the same thing as you had when you say five days without the holidays, because in practice it is the same thing.

That is not the problem. The problem was not that people came here and said, “I don’t understand the five days.” They were saying: “We know what the five days are; it is not long enough. We want seven days.” It would seem to me that if you go back to the five days and spell out the holidays, you are not doing anything other than clarifying for the non-legal person that five days assumes that it does not include holidays—Saturdays, Sundays and holidays.

The issue is whether it should be five days or seven days, and I think that the intent of both the government motion and Mrs Cunningham’s motion is to extend that time and it does not do it by going back to saying five days and spelling out the fact that it excludes those other days.

**The Chair:** My understanding from the clerk is that if Mrs Cunningham’s motion passes, the government motion will be out of order, so we really are only speaking of one motion.

**Mrs Cunningham:** We are trying to solve a problem that takes in both motions here. In life, if you go back to what you are trying to do, I think that my colleague has just said exactly what the problem is. Mr Wessinger, I would appreciate you speaking to this one, too, because the “fifth” I can understand, but that does not extend the time, and they want more time. The Canadian Federation of Independent Business, small-business people, want more time.

**Mr Wessinger:** The original, stating the fifth day, does not refer to the fifth day including holidays. So it would not be actually five days through the holidays.

**Mrs Cunningham:** Oh, it did not?

**Mr Wessinger:** No, that is right. So, in fact it was five days—

**Mrs Cunningham:** Okay, so this was not correct, then?

**Mr Wessinger:** No, not in the original act.

**Mrs Cunningham:** All right. Well—

**Mr Kwinter:** But it seems to me that in our conversation, there was an absolute comment that five days in the rules of practice implies that it does not include holidays.

**Mr Wessenger:** That is correct.

**Mr Kwinter:** And the rules—

**Mr Wessenger:** The rules do not apply to this.

**Mr Morrow:** Mr Chair?

**The Chair:** Yes, I am sorry. Mr Morrow.

**Mr Morrow:** First of all, we have to address the standing down that I asked for, and I do have a problem with legal counsel trying to take out the statutory holidays. Coming from a labour union, I really do believe there are statutory holidays and I would ask that that be left in.

**Mr Revell:** Mr Morrow, there are two sets of statutory holidays, and this is one of the problems, in fact, that is being addressed in the office of legislative counsel and policy development division of the Ministry of the Attorney General. The Employment Standards Act has a list of holidays which I believe is the list of holidays that most trade unions consider to be statutory holidays. Okay? Unfortunately, there is a second list in the Interpretation Act, which is not exactly the same list. The list that is in the Interpretation Act is the list that is used for such things as determining services of notices and the like. I can bring a copy of the Interpretation Act this afternoon. But that is in fact the way it operates.

**Mr Sorbara:** Is there not also a list of holidays in the Retail Business Holidays Act?

**Mr Revell:** Oh, yes, and there is a third list in the Retail Business Holidays Act.

**Mrs Cunningham:** Mr Chairman, how much power does this committee have, because we could fix a lot of things? We could just continue on. If we wait for the normal process of government, these people that are sitting around here, waiting for things to be cleaned up, Mr Wessenger, for years, we could just do it in this committee. Set the precedent. Rules of practice we have already changed. Mr Sorbara, you might even be happy about this, you never know. Think about it over lunch. You could get excited about this.

**Mr Sorbara:** I will wait until counsel tells us what is most consistent with everything else that is—

**Mrs Cunningham:** I think that would be a good idea, as long as we all agreed what we were trying to solve.

**The Chair:** Are you suggesting that we—

**Mrs Cunningham:** Stand it down.

**Mr Sorbara:** Stand it down until we have a report from legislative counsel.

**The Chair:** Are we then agreed?

**Mrs Cunningham:** We will not spend much time on it when it comes back.

**The Chair:** This section and number 12 have been stood down. Mr Morrow?

**Mr Morrow:** I would ask for a five-minute recess.

**The Chair:** A five-minute recess? Thank you. We are recessed until a quarter after 11.

The committee recessed at 1109.

1120

**The Chair:** I would like to call this meeting back to order, please.

**Mr Wessenger:** Okay. Mrs Cunningham, could I just ask for clarification? You are happy with your amendment stating that "The notice shall be deemed to have been served on the individual, corporation or other entity to whom it was mailed on the fifth day following mailing, excluding Saturdays, Sundays and holidays, unless the contrary is shown."

**Mrs Cunningham:** If in fact we are not getting confused, Mr Kwinter and I together are making certain that that increases the amount of time. If you are assuring me that it is more time and spelled out clearly what they wanted, that would be helpful, so that is fine.

**Mr Wessenger:** That is fine, okay. I am prepared to accept the amendment on the basis that probably your amendment sacrifices certainty to some extent perhaps by making it somewhat fair. So therefore, on that basis it is acceptable to the government.

**The Chair:** For the purpose of the record, it appears that the members are discussing the amendment to Mrs Cunningham which was set aside. It appears that it is the wish of the committee to resume discussion of that amendment. If those friendly amendments are acceptable, I am wondering if it is not appropriate to read that amended amendment.

**Clerk of the Committee:** My understanding of the amendment is that it will now read: "The notice shall be deemed to have been served on the individual, corporation or other entity to whom it was mailed on the fifth day following mailing, excluding Saturdays, Sundays and holidays, unless the contrary is shown."

**The Chair:** Thank you.

**Mrs Cunningham:** Correct.

**The Chair:** Any further discussion?

**Mr Sorbara:** Do we have any—

**The Chair:** All in favour of the—certainly, Mr Sorbara.

**Mr Sorbara:** I am just asking whether that is what is closest to the general rules of civil procedure or we are not concerned about that?

**Mr Revell:** In terms of the closest to the rules of civil procedure, we have sent out to obtain a copy of the rules of civil procedure, but we have not checked that yet.

**Mr Sorbara:** Okay. Well, cancel that call because the Chairman is going to call for a vote on this thing now.

Motion agreed to.

**The Chair:** Page 12.

Interjections.

**The Chair:** Mrs Cunningham, given that your motion has passed, the next motion, which was to be the one on page 12, is now out of order. We now move to the motion on page 14.

**Mr Wessenger:** Or should we go back?

**The Chair:** Go back?



**Mr Wessenger:** I am wondering whether we should go back to the other motion that has been—

**Interjection:** No, not yet.

**Mr Wessenger:** Not yet, okay.

**The Chair:** Okay.

Mr Wessenger moves that subsections 3c(5) to (10) of the act as set out in section 3 of the bill, as printed, be struck out and the following substituted:

“(5) The director shall send a copy of the notice to the payor by prepaid ordinary mail at his or her last address as shown on the records of the director’s office.

“(6) An income source shall begin making payments to the director’s office not later than the day the first payment is to be paid to the payor that falls at least 14 days after the day on which the income source is served with the notice.

“(7) Until an income source begins deducting support payments in respect of a support deduction order or if payments by an income source are interrupted or terminated, the payor shall pay the amounts owing under the support order to the director or, if the support order has been withdrawn, to the person entitled to receive support.

“(8) The director may include in the amount required to be deducted and paid to the director’s office any amount in arrears under a support order.

“(9) Subject to subsection (10a), the total amount deducted in respect of a support order shall not exceed 50% of the net amount owed by the income source to the payor.

“(10) For the purposes of this section, ‘net amount’ means the total amount owed by the income source to the payor at the time payment is to be made to the director’s office, less the total of the following deductions:

“1. Income tax.

“2. Canada pension plan.

“3. Unemployment insurance.

“4. Union dues.

“5. Such other deductions as may be prescribed by the regulations.

“(10a) Subject to subsection (10c), a court when it makes a support deduction order or on the motion of the director may order that one or more income sources pay an amount that is higher than the amount described in subsection (9) and such an income source shall pay to the director’s office the amount set out in the order.

“(10b) An order shall not be made under subsection (10a) unless the payor receives income from at least two sources (whether or not the sources are ‘income sources’ as defined in section 1).

“(10c) An income source is not required to pay to the director’s office more than the net amount that the income source owes to the payor at the time of the payment.

“(10d) Despite any other provision of this act, no deduction shall be made under a support deduction order in respect of amounts owing to a payor as reimbursement for professional services and for things provided under a medical, dental or hospital insurance contract or plan.”

**Mrs Cunningham:** Mr Chairman, if you take a look at our motion 16, and I think 17 as well—it is really an amendment to the amendment and I think it would be in order to deal with it now. We are looking at subsection 3c(6).

**The Chair:** The clerk advises me that you are correct: that it is effectively an amendment to the amendment and therefore it should be dealt with first.

Mrs Cunningham moves that subsection 3c(6) of the act, as set out in the government motion, be amended by striking out “14” in the third line and substituting “30.”

1130

**Mrs Cunningham:** The same group that seemed to have significant impact on our thinking, the small business community, has drawn it to our attention that we again should be expanding the time frame of at least 14 days. So here we are looking for intent. We chose 30 because we heard it a couple of times but, again, we would look for the assistance of the government, certainly the director, in helping us with a practical solution to the time frame problem; 14 was definitely too short.

**Mr Sorbara:** I am going to give the same speech and it is a simple one. That is, this section should be consistent with other documents like it. The other document that is like it that I know about is a garnishment notice. If the administration of the branch or some other person can tell me what the time frame is for a notice of garnishment I plead with the committee to make these two consistent, because it would be foolish for an employer to say, “Well, this is a notice of garnishment and I’ve got 20 days to start with this, but this is a support deduction order”—which, by the way, Mr Chairman, is the very same thing as a notice of garnishment, in effect—“and I’ve got 14 days to start with that.” So can anyone answer that question?

**Mr Wessenger:** I think I will ask staff to indicate that answer, because you certainly have raised a point.

**The Chair:** Do we have an answer?

**Ms Feldman:** The only reference that I can see in the rules of the family court, where a provincial court garnishment is issued, is that a garnishee or a payor has 10 days to file a dispute after being served with the notice of garnishment, with the garnishment materials, so it is 10 days. But I cannot respond as to when service is deemed under the family court rules without looking through the first part of—

**Mr Sorbara:** No, this is not service under family court rules. This is subsection 3c(6), on when they have to start. This establishes the time frame within which they have to start paying, which, if I understand it correctly, is the first payday after 14 days after the income source receives the notice. So it is the first payday after 14 days after the notice is deemed to be received. Can anyone tell us what the equivalent is when someone receives a notice of garnishment, either from your outfit or from anybody else’s outfit, or is there a rule or is this the first time we are establishing this? Because it should be consistent for the benefit of those poor people in payroll departments who have to enforce this junk.

**The Chair:** Counsel?

**Mr Sorbara:** We can stand this down until this afternoon, if you want to do some research on it.

**The Chair:** The issue does not seem to be easily resolved from that act—

**Mr Sorbara:** Not from that act, but—

**Mr Carr:** The points that I would like to make on this were two. The large corporations said that with computerized payrolls they were looking at 21 days before they could change, and I believe it was the lady from Dofasco who said that their computerized system took 21 days to change, if I remember correctly. Then the other problem with the small businesses, if I remember correctly, as well, is that small business owner-operators do their books only once a month, they do not do the books through the week, because if they are running a Mac's Milk store or whatever, they are actually on the front lines taking the cash. What happens is that once a month they know they do their books, because they have to do it for income tax purposes, for receivables and so on.

So what we are looking at here is keeping it consistent for those small businesses where the person who is going to be doing the work is not a large payroll department, it is an individual; and also in the case of the large payroll departments where 21 days is what they say it takes to change the computerized system in large organizations. So that was, I think, some of the rationale that we heard from some of the groups that came in. It was not only the small but also the large that had some concerns in that regard, if I remember correctly.

**Mr Wessenger:** I would like to answer Mr Sorbara's question. The fact is that a garnishment is effective immediately it is served; there is no time period at all. Once a garnishee is served on the employer it is effective the date of service. There is no time period at all. What we are doing is we are distinguishing between a support deduction order and a garnishment, because if you garnish, bang, you can get it right away.

Now, what the Canadian Payroll Association recommended, they wanted at least seven days before it came into effect. One other group, I believe, did ask for a longer period and what we recommended is, in effect, a compromise situation saying at least 14 days. So our position is, we would oppose the 30 days.

**Mrs Cunningham:** Let us just try to influence your position here. On page 4—I have not got the most updated, I have got the 12 February, I should have the 20 February document here.

Certainly if you are looking for a compromise, you have got anywhere between seven and 30 days—

**Mr Wessenger:** Yes.

**Mrs Cunningham:** —in the public input, if we are really looking for a solution.

I suppose in raising this, I do not want anyone to misunderstand that I think when the payor gets a notice they should, in fact, make certain that this gets into action immediately. That is where I am coming from. Absolutely.

**Ms S. Murdock:** Income source.

**Mrs Cunningham:** Income source?

**Ms S. Murdock:** The payor is the—

**Mrs Cunningham:** I am sorry. The income source should be moving as quickly as they can.

You can persuade me if you can answer my questions in this regard. If the income source does not, they are then liable.

**Mr Wessenger:** That is right.

**Mrs Cunningham:** In fact, they will be fined, in a sense. That is a simple way of putting it.

**Mr Wessenger:** They will be liable for the payment.

**Mrs Cunningham:** That is right, out of their own pocket.

**Mr Wessenger:** Without proper reason, of course.

**Mrs Cunningham:** That is right. I think this legislation is threatening in a couple of ways to the business community in that they see it as something else for them to do, not that they do not think it is important, because they are always doing it. At the same time, they want to be given reasonable time to comply.

I do not look at this as a postponement in any way; I look at it as a reasonable time to comply under very special circumstances. The special circumstances were—if you will take a look at page 4 of the legislative research, have you got this?—okay, I will just read it in. It says: "Increase the period to 21 days to allow automated payroll systems to respond to the demand." That was the Canadian Bankers' Association. I am trying to be fair with regard to your own response.

"A 30-day period would make compliance easier for smaller businesses." That is the Canadian Federation of Independent Business. I went back and looked at that brief because I thought that was too long, but when they explained that they have small bookkeepers and small family businesses coming in once a month and they are trying to keep their costs down of running these businesses, which are being tremendously challenged in these days, I thought that made sense.

Our great fear, of course, in lengthening it all is that people would look at this as a rule rather than a direction, and I share the government's concern on that. On the other hand, I think in these times we want to make it reasonable and fair for everybody to comply with this legislation.

I think there was one other one, if I have my 20 February one with me. If we are looking for a compromise, I would say that 14 is not a compromise and that 30 is practical for everyone, and then I think the government should feel very confident in being able to enforce its legislation and making the income source pay up.

1140

**Mr Wessenger:** I think it is always a question of balancing the two interests. The concern that we have is the fact that if someone is paid on a monthly basis, even with the 14-day period it might be six weeks before the person gets a support payment. If you extend it for 30 days then you might even possibly go two to three months by missing two pay periods. It was felt that that would really weaken the whole program as far as providing payments to the recipients. The major impact of this legislation is trying to improve the situation of the recipient's payments. So on balance we thought it was more important to get the recipient an earlier payment. We did go beyond what was the



minimum specified by the one group, which was seven days; we did go to the 14. So we felt we were making a reasonable compromise in this situation. The fact is, we could throw out a garnishment right away and the person would be bound immediately.

**Mrs Cunningham:** And that does not imply the fine for the income source.

**Mr Wessenger:** No. If they did not adhere to the garnishee, they would be liable for payment directly. Of course, there has to be an arrears before the garnishee could first be sent out, that is true.

**Mr Sorbara:** I noticed that in the government's amendment it has made some accommodation, because in the original proposal it had a payment required not later than 14 days and on the first payday between the date when the notice was received and 14 days after. That was pretty draconian. So I think probably just on the amendment—I understand where Mrs Cunningham is coming from and she would like 30 days—in the interest of the person who is to benefit from the support order, 14 days is probably better, with one caveat: I would hope that officials from the Ministry of the Attorney General would think about making this new standard the standard for all of these things. In other words, just make a little note to yourself that some day you ought to bring a bill to the House changing the law relating to garnishment. These things should be consistent. You should have a consistent way of doing business. If you are changing a standard, and that is what you are proposing here, get the standard changed throughout the line of business that you are in. I would be interested in—

**The Chair:** Any further comments on Mrs Cunningham's—

**Mr Sorbara:** I have not finished yet, Mr Chairman. I appreciate where Mrs Cunningham is coming from and I support her in principle, although personally I think that on this one the 14-day period is a good compromise, because there are 14 days within which a payroll department can prepare for the payment. If I know anything about payroll departments—and I do not know all that much—it seems that with our computerized ability to manage payrolls now, this would be an acceptable time frame.

Mr Chairman, I am just wondering if this is the appropriate time in which we might have a little discussion about time frames. I notice that the whip for the government party has suggested that the committee meet only until 3 o'clock this afternoon. That is acceptable to us so long as we continue to begin meeting at 2 o'clock, which is something that I think would accommodate the schedules that the rest of us have.

**The Chair:** You are suggesting—

**Mr Sorbara:** That we meet from 2 o'clock until 3 o'clock today.

**The Chair:** Two o'clock until 3.

**Mr Sorbara:** This is to accommodate the government whip.

**Mr Morrow:** I would like to briefly discuss it if we could, that we adjourn at 3.

**The Chair:** It would seem that we are in the midst of a discussion about an amendment.

**Mr Sorbara:** I will raise it as a point of order then.

**Mr Wessenger:** Why do we not finish this amendment and then discuss this?

**Mr Morrow:** Can we finish this, Greg, and then move to that? Would you mind?

**Mr Sorbara:** Sure.

Motion negatived.

**Mrs Cunningham:** Mr Chairman, I just want to draw to your attention another one that would more appropriately have been an amendment, number 17, that we can probably dispense with now, a Progressive Conservative motion, which is the same—

**Mr Sorbara:** Is that an amendment to the amendment?

**Mrs Cunningham:** It is exactly the same, Mr Chairman, as subsection 10d of the proposed amendment that we are dealing with, so we would withdraw it at this time.

**Mr Carr:** Seventeen is the same as 15?

**Mrs Cunningham:** We are going to deal with it now. You have already done it. Good.

**The Chair:** So Mrs Cunningham's amendment on page 17 is withdrawn?

**Mrs Cunningham:** Correct, Lisa?

**Clerk of the Committee:** Yes.

**Mrs Cunningham:** We will withdraw it and congratulate the government on its leadership.

**The Chair:** Shall we return to the government amendment or to the discussion of the timing?

**Mr Morrow:** Can we please move to the timing? Can I open this to the floor that we adjourn at 12, come back at 1 o'clock and then adjourn this afternoon at 3?

**Mrs Cunningham:** I do not even know how long—Murray, are you on that tour today at noon for the—

**Mr Elston:** No. I do not do tours because we are busy working with people.

**Mrs Cunningham:** Would the Chairman please note that the government House leader—I hope he has already been on the tour that I am going on for the special committee on the parliamentary precinct.

**The Chair:** I think you are referring to the opposition House leader.

**Mrs Cunningham:** Yes, that is right. Anyway, there is something on at noon today and I do not know how long it is, so I cannot say what time I can come back. If somebody can find out—

**Mr Sorbara:** It is very difficult for our caucus as well to change the lunchtime schedules. I know I am not anticipated back here until about—

**Mrs Cunningham:** Why 3?

**Mr Morrow:** Okay, 4.

**Mrs Cunningham:** No, I mean—

**Mr Sorbara:** We are okay with 3. Two until 3 is fine, at least with our party. I do not know about the Tories.

**Mrs Cunningham:** It depends on when we are going to get all this done.

**Mr Sorbara:** We will get it done.

**Mr Morrow:** I really do not think that an hour this afternoon is really sufficient time, so I was kind of hoping to have a little bit longer than an hour.

**Mrs Cunningham:** Oh, definitely. I thought we were here until 6 o'clock tonight. Somebody wanted to listen to the budget speech last night, so I was agreeable. I did not want to do that. I have work to do. I plan on being here until 6 o'clock tonight.

**The Chair:** I believe that we are here until such time as the committee decides we should adjourn.

**Ms S. Murdock:** We have not set anything.

**Mrs Cunningham:** We want to get it done ourselves, if we can.

Interjections.

**Mrs Cunningham:** We will take it under advisement over lunch.

**Mr Fletcher:** What time are we having lunch?

**Mrs Cunningham:** I have to find out where we are going and—

**Mr Sorbara:** Let's hear of a practical problem. Are the New Democrats all on their way to something? Listen, we want to accommodate you, and so we would support you in a—

Interjections.

**Mr Sorbara:** At lunchtime. I am talking about this afternoon. Your whip is suggesting a 3 o'clock adjournment. That generally happens when some party function is going on and you are doing—

**Mr Morrow:** Actually, Mr Sorbara, there was nothing going on. It is just that a couple of members had some timing problems, but if the committee wants to sit here until 6, by all means we will be here until 6.

**The Chair:** Or whatever time—

**Mr Morrow:** Or whatever time, yes. I was opening it to see what we thought as a whole.

**Mrs Cunningham:** It is hard to get our two people here all the time, given the work of our small caucus, and we are here this afternoon.

**The Chair:** Should we then continue until approximately noon hour—

**Mr Wessinger:** Yes, and then come back at 2.

**The Chair:** Excuse me, is it the will of the committee that we adjourn when we reach noon hour until 2 o'clock? And we have not decided as yet how long we will be sitting this afternoon.

**Mrs Cunningham:** I will go find out—

**The Chair:** We have not adjourned as yet, Mrs Cunningham.

**Mrs Cunningham:** No. I just want—it will help me to decide. If I want to be here I need to know how long the tour is going to last. Does anybody know?

**The Chair:** We are resuming at 2 o'clock.

**Mr Wessinger:** Two o'clock, no problem.

**Ms S. Murdock:** Yes. You will not be going through this building for two hours.

Interjections.

**The Chair:** With the indulgence of the committee, I am wondering if I could have your attention for a few moments. We have a rather lengthy government amendment in front of us, which is on pages 14 and 15. I am wondering, given the extent of this amendment, whether we should consider it now or adjourn until 2 o'clock.

**Mrs Cunningham:** If we can be assured that Mr Wessinger will come back in a good mood, we will adjourn now.

Interjections.

**The Chair:** I am sorry, do we have an agreement?

**Mr Sorbara:** Motion to adjourn until 2 o'clock.

**The Chair:** We have a motion to adjourn. Is that acceptable?

We are adjourned until 2 o'clock.

The committee recessed at 1150.



## AFTERNOON SITTING

The committee resumed at 1409.

**The Chair:** Before we resume discussion of the government motion on page 14, the clerk has an announcement.

**Clerk of the Committee:** Actually I have a few announcements. I am going to be handing out, in a few moments, two background papers prepared by Susan Swift on victims of crime that we are starting tomorrow, and an agenda for victims of crime. You will notice that we start at 10:30 tomorrow morning.

The other announcement is that there has been a request from the Hansard office, they are having a little difficulty transcribing this committee. If people could try to talk one at a time they would really appreciate it.

Interjections.

**The Chair:** I think that very event is presently occurring, so with due respect to the reporter perhaps we can attempt to speak singly.

**Mr Mills:** I think it would be a good idea too, because some of them sound rather incoherent, the way it is reported and that reflects on—

**Interjection:** On us?

**Mr Mills:** Yes, it does.

**The Chair:** Thank you, Mr Mills. Any further announcements?

**Clerk of the Committee:** That is it.

**The Chair:** Thank you.

Interjections

**Interjection:** I think it is the ministry staff.

**The Chair:** Ahem. I am sure that Hansard will respect the fact that having made that announcement, the exact opposite effect is occurring.

**Interjection:** That is right.

**The Chair:** Have you discussed your rationale for this amendment, Mr Wessinger?

**Mr Wessinger:** Yes, we did.

**The Chair:** Or have you just gone over the amendments?

**Mr Wessinger:** We have not discussed the motion that I made with respect to subsections 3c(5) to (10) of the act. That was read in and I believe—was it ever dispensed with?

**The Chair:** I believe so.

**Mr Wessinger:** I might—

**The Chair:** Excuse me a moment, if I could. It was dispensed with, the clerk advised me. Would you like to lead off with this section, or should we just enter into discussion?

**Mr Wessinger:** I could review the changes, since they are fairly extensive, although subsection 6, an income source, the 14-day period, I think, has already been discussed so I do not really think that needs any more discussion. That was all involved in connection with the amendment by Mrs Cunningham with respect to 30 days.

That amendment was lost so we are now back to the 14-day period which is a change from the seven days previously. Am I correct there? I do not have the right page—

**The Chair:** Any further—

**Mr Wessinger:** The next, subsection 7: this subsection was added to make it clear that the payor is obliged to make all payments, both before the income source starts deducting and during any interruption. It is just for clarity, the payor still has the obligation to pay in spite of the fact that the income source does not make the payments.

Subsections 8 and 9 were added to ensure that it was 50% of net wages. It is now 50% of net, which complies with the same rules as garnishment provides for.

We added subsection 10 because business groups said there was some lack of clarity of what "net amount" meant, and so we defined the deductions in paragraphs 1, 2, 3 and 4, which are income tax, Canada pension plan, unemployment insurance and union dues; "5. Such other deductions as may be prescribed by the regulations." There are none anticipated at this stage, unless there is a new provincial tax or federal tax added that would have to be included.

**The Chair:** Mr Wessinger, are you finished with your—

**Mr Wessinger:** Okay, the next page, subsection 10a—this just relates to the change in numbering and clarifies when they, a court, may order more than 50% to be paid, and that applies only when there are at least two income sources. We wanted to make sure that there were at least two income sources before the court would order more than 50%. The next page, subsection 10c, again, is just a change in numbering and 10d was in response to concerns raised with respect to insurance reimbursements. We wanted to make it clear that we were not going to attack reimbursements for professional services or for medical, dental or hospital expenses with respect to insurance—

**The Chair:** Excuse me just a moment. For the purpose of the record, when Mr Wessinger is referring to the next page, he is referring to the annotated copy and not the government motions in front of us. Thank you.

**Mr Wessinger:** Yes, page 15, actually. We are on subsection 10d. That was in response to the particular representation made, and we felt it was a very good representation, because it was not the intention to cover these items, so that by excluding them it was with the intent of the legislation. Okay?

**Mr Poirier:** I have a question for the parliamentary assistant. For your proposed changes to subsection 10, paragraph 4 within subsection 10, union dues, could that also include compulsory professional association fees or just strictly union dues? Because I find that definition very limited, sir. There are other compulsory payments made by people that may not be necessarily union dues; professional associations, for examples.

**Mr Wessinger:** A teachers' association would still be called union dues, if I am correct.

**Mr Poirier:** Possibly for teachers, yes.

**Mr Wessenger:** Yes.

**Mr Poirier:** How about doctors, engineers, lawyers—

**Mr Wessenger:** Doctors and engineers would not have professional—

**Mr Poirier:** Yes they would.

**Mr Wessenger:** Do they?

**Mr Poirier:** Social workers—

**Mr Wessenger:** Certainly lawyers would.

**Mr Poirier:** Why would you not just say “compulsory association fees or union dues,” for whatever types.

**Mr Kwinter:** Remember the law society?

**Interjection:** It is defined in the income tax law.

**Mr Wessenger:** Certain payments are compulsory in order to practise, but they are not normal deductions from wages. For instance, a lawyer has to pay his fees to practise law, yet they would not be a normal deduction under payroll.

**Mr Poirier:** Can you confirm to me that union dues would be the only types of similar fees to be deducted from wages? I am sure there must be other ones.

**Mr Wessenger:** That is the only one I can anticipate, because it would show up on your T4 slip, union dues.

**Mr Poirier:** Yes, of course. I know.

**Mr Wessenger:** Even if they were—no matter how they were classified.

**Mr Poirier:** Right. But as long as you tell me that what you have written down here, “union dues” includes any other types—

**Mr Wessenger:** Of deductions falling—

**Mr Poirier:** —of the compulsory deductions that would show up on a T4.

**Mr Wessenger:** That are of a nature of a requirement, yes.

**Mr Poirier:** Professional or whatever.

**Mr Wessenger:** Oh, there is an—whose comment is that?

**The Chair:** That is mine.

**Mr Poirier:** I am still waiting for the PA's answer.

**Mr Wessenger:** I think really that is why we have “Such other deductions as may be prescribed by the regulations,” in case there is any problem, because the intention is anything that is compulsorily deducted from the paycheck—

**Mr Poirier:** Right.

**Mr Wessenger:** —on a, say, non-volunteer basis, like some people have debt payments that are deducted. You would not have that reduced, but certainly the intention is anything that is related to employment, a condition of employment, would be deducted.

**Mr Poirier:** So if there was something similar to union dues but not necessarily to a union, you would be agreeable to have them included.

**Mr Wessenger:** In the regulations, yes.

**Mr Poirier:** Fair enough. That is what I wanted to hear.

**The Chair:** So what you are suggesting is that your intent is that it be noted for inclusion right in the regulations.

**Mr Wessenger:** Yes.

**Mr Poirier:** Exactly, yes. If you are not willing to change and you just want to leave “union dues” here, I would have preferred for you to say, “union dues or any other compulsory professional deductions,” or whatever the hell the proper wording would be.

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**Mr Wessenger:** I understand what you are saying and we will certainly make sure they are included. Anything that would fall in that category should be included in the regulations and instructions are to the staff to ensure that.

**Mr Poirier:** Very good. I have your guarantee for that, then—

**Mr Wessenger:** Yes, my undertaking. Yes.

**Mr Kwinter:** I was just going to elaborate. There are several situations where that could apply. An architect working for a large architectural firm cannot practise architecture unless he is a member of the Royal Architectural Institute of Canada and his membership fees, in order to allow him to stamp his drawings, may be paid for by his employer and charged back against him, and that is just another example where it is something he has no choice over. It is a professional fee that allows him to practise his profession and earn his living and it is certainly recognized by the Income Tax Act and I think should be recognized here as well.

**Mr Wessenger:** That is certainly the intention of the deduction. I can assure you that is the intention, and the reason why we have, as I said, the regulations thing is, in case there is anything that comes up that is not covered, we want to make sure it is covered.

**Mr Kwinter:** Fair enough.

**The Chair:** Okay. Anything further on this section? Mr Kwinter?

**Mr Kwinter:** I would like to just spend a little bit of time on subsection 3c(10a). I am a little concerned when it talks about a higher amount than described in subsection 9, which in turn says that, “Subject to subsection (10a), the total amount deducted in respect of a support order shall not exceed 50% of the net amount owed by the income source to the payor.” This provision is, I assume—and I would like to get some clarification—that if there are two sources of income and it happens that the amount of the court order is greater than the total sum of one of the sources of income, but the combination of the two, if you then attach the second income, is still under 50%, that is permissible.

**Mr Wessenger:** Yes, that—

**Mr Kwinter:** Is that what is supposed to be happening in this provision?

**Ms Pilcow:** That is one of the situations. The other one is one in which one of the income sources is not an income source as defined. So if a person has employment income which is sufficient to pay the support and then is self-employed, earning other income, but that is not an income source as defined in the legislation, you could get



more than 50% from the income source which is an income source as defined.

**Mr Kwinter:** My concern is, how do you police that? How do you get a situation where an employer, an income source, looks at the act and says, "My total obligation is no more than 50%?" The director contacts that income source and says, "Notwithstanding the provisions of section 9, I have information to the effect that there is another income source, and as a result I am requesting and requiring you to submit 100%," or 80% or whatever it is, an amount over and above the 50%. My concern is, it would seem to me the onus should be on the director to get 50% from the one and whatever requirement, up to 50%, of the other, as opposed to putting potentially the first income source in a situation where they are required to make a remittance that is over and above what is normally required under the act, and may subject them to a lot of problems.

**Mr Wessenger:** I think there needs to be a little clarification here. The director cannot on her own decision go beyond the 50% for any income source, under the act. It is only if there is a court order, it is only the court that can make such an order.

**Mr Kwinter:** Well, what it says, "...a court when it makes a support deduction order or on the motion of the director may order that one or more income sources pay an amount that is higher than the amount described in subsection 9..."

**Mr Wessenger:** It is the court that makes that order. The motion of the director—

**Mr Kwinter:** The motion is made by the director, but it then has to be made by the court?

**Mr Wessenger:** Made by the court. You have to have a court order; you cannot take more than 50% from any income source without a court order. So what would happen—for instance, supposing a lawyer is a member of the Legislature, we will say, and the person is practising law, has income from his law practice as well as income from the Legislature. A court could order that all of the money from the Legislature income, or more than 50%, be paid for support because there is another income source, the law practice. But the court would make that order and the director could bring a motion, would have to bring an application to court. That is basically what it says. The director could bring an application to court to ask that more than 50% of the indemnity from the Legislature be prescribed to pay the support.

**Mr Kwinter:** Okay, then, can I just pursue that a little bit further? What happens if the income source—there are two income sources at that point and the director brings a motion, it is granted and the deductions take place. Suddenly one of the other income sources dries up, disappears, whatever it is, ceases to be an income source. Does that mean you have to go back to court again?

**Mr Wessenger:** That means you have to go back to court, yes.

**Mr Kwinter:** Which brings us back to this whole problem that we will have a lot of court activity, potentially, as I understand it.

**Mr Wessenger:** I think it is going to be very rare that you are going to have this situation occurring, where you have more than 50% for one income source. It will be the rare occasion that it occurs, rather than the usual occasion. I think it is fair to say, and I hope I am not speaking out of place with the director here, but a situation where an individual has both an income source and another source of income and is in compliance with payment of his support, I cannot see the director deciding to go to court to ask for more than 50%. I mean, I would—

**Mrs E. Mills:** That is where you get back to "practical."

**Mr Wessenger:** That is where you get back to "practical," yes. So I would be upset if the director did in that instance bring an application. It would only be the instance where there had been default, where you are likely to have the director trying to get more than 50%.

**Mr Kwinter:** One last question. If in this hypothetical situation where the second income source ceases to be an income source, is it the director who would bring a new motion or would the payee have to bring the new motion, or the payor? Who brings the motion to vary the order?

**Mr Wessenger:** The payor would normally be the person who brought the motion. He would probably want to vary his support order as well, because if he had lost one source of income, not only would he probably want to reduce the 50%, the income source, he would probably also want to reduce the amount of support because that would be a fairly substantial loss of income in most cases. He would probably have good grounds for varying the amount of support, as well as reducing the order respecting the 50%.

**Mr Kwinter:** Okay, then. Sorry, but I have one other question I want to ask.

**Mr Wessenger:** Yes, certainly. Go ahead.

**Mr Kwinter:** If you have a situation where the payor wants to vary the order, only has one income source now, that income source at 50% would be less than the court order, and under subsection 9 the maximum that can be deducted from the one income source is 50%. He would get that variance, he would not get a new court order because the court order would be for the higher amount, he would just be in arrears.

**Mr Wessenger:** Let me just say, if I was the lawyer representing the individual who had only one income source and it was more than 50% on the existing court order, I can assure you that I would also bring an application to vary the amount of support, and I cannot see a court ever ordering more than 50% payment. I would be very surprised, anyway, if it did. I find the average about 20%, actually, of the order, the average support order, not 50%.

**Mr Carr:** I wanted to refer to subsection 3c(7), the payor's duty to pay. That, as a result of this amendment, now stands out as something new to our particular undertaking here, and I know it has been laid out in the purpose for the amendment. In your own words, what would be the reason for subsection 7, then?

**Mr Wessenger:** The reason for subsection 7 is, I think—and I may be wrong again—for clarity purposes

only. In our opinion, even if you did not have subsection 7, the obligation of the payor to make the payment is still there; but just to make it clear or just to reiterate, the obligation is inserted.

**Mr Carr:** How would it be clear now, then, through what?

**Mr Wessinger:** We set it out in this section just so it was clear to anybody reading the section that the obligation still continued. In our opinion, it still—

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**Mr Carr:** How would it now be clear—through what?

**Mr Wessinger:** We set it out in this section just so it was clear to anybody reading the section that the obligation still continued. In our opinion, it still continues even though this section is not added. It is not considered as being absolutely necessary but was put in for clarity purposes.

**Mr Carr:** Had there been any disputes over that particular one—

**Mr Wessinger:** I think certainly the bar had some problem, lawyers had some problem, reading the legislation, so we were trying to apply to make it more readable.

**Mr Elston:** You mean put more sections in?

**Mr Wessinger:** So they would not have to refer to other sections, Mr Elston. The bar finds great difficulty reading legislation often, and so does the judiciary at times.

**Mr Carr:** In number 8, the arrears, you have broken that down now. It basically had been sent through on a very complicated formula. We are now breaking that out and just saying 50%. The intent is still pretty much the same then.

**Mr Wessinger:** Yes, the intent is the same. It is for clarity purposes. It actually has been changed somewhat, because it is now exactly consistent with garnishment. We have made it conform exactly with the garnishment provisions.

**Mr Carr:** The garnishment provisions would be tougher than our old—

**Mr Wessinger:** Than this one?

**Mr Carr:** Yes.

**Mr Wessinger:** Yes, we would have gotten more under garnishment than we would under the formula.

**Mr Carr:** So now you are going to get more out of this—

**Mr Wessinger:** Now we are going to the same, not more; exactly the same as garnishment.

**Mr Carr:** The same as garnishment.

**Mr Wessinger:** Yes, so we are consistent. I think it is very important that we have consistency between the two.

**Mr Carr:** Looking at this formula, I thought I was back in high school with the—

**Mr Wessinger:** I know, I had the same problems. I hate formulas. It reminds me of the Income Tax Act and I hate reading the Income Tax Act.

**Mr Carr:** So what we have done with this is we have laid it out in fairly simple terms, but we are trying to make it basically conform with garnishment.

**Mr Wessinger:** Yes, exactly the same as garnishment.

**Mr Carr:** Okay.

**Mr Poirier:** On subsection 3c(7), I agree with the PA, it might not be necessary legally but I have a feeling, from my past experience with SCOE in my MPP office, that a lot of members will be pointing out subsection 3c(7) to a lot of payors who will try to plead that they do not have a duty to pay. I think that members, in hindsight, with my past experience, will be pointing out that subsection to a lot of them who come into their office saying, "I have no duty to pay." I think that would come in handy.

**Mr Elston:** With respect to the 50% amount again, just so that I am not mistaken: Under a garnishment order we know that it can only go to maximum with respect to all of the garnishments. In this case the maximum will be 50% on this but is it, in fact, 50% of the net amount due in relation to all other attachments for debts owing as well, or not? Just so we get this explanation again.

**Mr Wessinger:** I will let Ms Feldman answer that.

**Ms Feldman:** I realize that there was a concern raised by the Ontario Chamber of Commerce on the priority of support orders vis-à-vis other garnishments. In our view, there was a bit of misinformation and I think that a priority memo was circulated, if I can ask the clerk.

**Mr Elston:** Yes, it was actually sent around but I think it is fair to have it on the record for the discussion. I do not think it really forms part of the record until we talk about it on Hansard; is that right?

**The Chair:** Clerk?

**Clerk of the Committee:** Sorry, I was not listening to the question.

**Mr Elston:** It is just the material that was formerly circulated by the Attorney General's department speaking about the ranking in terms of priority of attachments for debts owing.

**Clerk of the Committee:** That is correct. If it was circulated, the Attorney General's background papers do not form exhibits to this committee.

**Mr Elston:** That is right. So we should actually talk about the issue here on the record to get it included in the formal proceedings, which is what I wanted to do.

**The Chair:** Have we done so?

**Mr Elston:** Not yet; we are just about to talk about it.

**Ms Feldman:** The maximum amount of a person's wages that is deductible is 50% and in Bill 17 the proposed subsection 3c(8) recognizes that, because that section provides that the total amount deducted in respect of a support order shall not exceed 50% of the net amount owed by the income source to the payor. The Wages Act indicates that there is an exemption of 80% of a person's wages with respect to ordinary debt and processes to enforce those debts, and that exemption is increased to 50% with respect to support orders. But those percentages are not cumulative.



The maximum amount deductible at any time is 50% of a person's net wages.

**Mr Poirier:** From all sources?

**Ms Feldman:** From all sources, unless the court orders otherwise.

Motion agreed to.

**The Chair:** Mr Wessenger moves that subsections 3c(12) to (14) of the act as set out in section 3 of the bill, as printed, be struck out and the following substituted:

"(12) If an income source has failed to comply with a support deduction order or if the director disagrees with an income source as to the amount being deducted and paid to the director's office or as to whether an individual, corporation or other entity is an income source, the director, on notice to the income source, individual, corporation or other entity, may bring a motion in the court that made the support deduction order to determine the issue and the court shall determine the issue in a summary manner and make such order as it considers appropriate in the circumstances.

"(13) An income source is liable to pay to the director's office any amount that it failed without proper reason to deduct and pay to the office after receiving notice to deduct and pay, and in a motion under subsection (12) the court may order the income source to pay the amount that it ought to have deducted and paid to the director's office.

"(14) In addition to any other method available to enforce an order in a civil proceeding, any order made under subsection (12) or (13) may be enforced under this act in the same manner and with the same remedies as a support order."

**Mr Carr:** On this particular one with regard to our motion, that is in conflict. I am asking maybe for a little guidance from the clerk.

**The Chair:** The clerk was just bringing your motion to my attention, which was why there was a slight pause before I started to read Mr Wessenger's motion. Could we have a discussion of that?

**Mr Wessenger:** Yes.

**The Chair:** We have read into the record page 18, government motion. However, the clerk advises me that properly we should be dealing now with the Progressive Conservative motion, which is effectively an amendment to this amendment, and Mr—

**Mr Wessenger:** Mr Chairman, I am wondering if we have some suggested amendments to the Conservative motion that might make it acceptable. I wonder if we might discuss—

**The Chair:** We may be able to do that, sir. However, Mr Carr will have to read into the record the amendment before we tinker with it.

**Mr Wessenger:** I am just suggesting, could we—

**Mr Elston:** Mr Chair, if I might be of some help, if you can agree between the two parties before it is read in the first time, you will not have to amend the amendment to the amendment.

**The Chair:** I appreciate that; however, the clerk advises me that before—

**Mr Elston:** If these two can come together and make a couple of slight changes, then Mr Carr can just move the motion once rather than several times.

**The Chair:** Should we recess for a minute in order for you to confer?

**Mr Wessenger:** Yes, I think so.

**The Chair:** Recessed for three minutes.

PThe committee recessed at 1440.

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**The Chair:** We would like to resume our deliberations.

**Mr Wessenger:** I have asked that this motion 19 be stood down until we have had a chance to try to resolve the drafting problems with respect to accommodating the intent of the motion.

**The Chair:** Is that the wish of the committee?

**Mr Sorbara:** Is this a PC motion?

**Mr Wessenger:** Yes, it is a PC motion.

**The Chair:** Are we standing down both 18 and 19?

**Mr Wessenger:** Yes.

**The Chair:** Okay, stood aside. Move on to page 20, which is also a Progressive Conservative motion.

**Mr Sorbara:** Before you move on, is it the intention of the committee more or less to support number 19 once the drafting is dealt with? I think it would be a good idea. After all, Mrs Cunningham is—

**Mr Wessenger:** We are trying to accommodate. I think that is the best way. Sometimes the parliamentary assistant, by trying to accommodate, creates difficulties. So we ought to make sure that it does not create any difficulties by trying to accommodate.

**The Chair:** Okay. Can we move on now to page 20, which is a PC motion?

Mrs Cunningham moves that subsection 3c(15) of the act, as set out in section 3 of the bill, as printed, be amended by striking out "10" in the first line and substituting "21."

**Mrs Cunningham:** Call the question. I thought I would use new techniques this afternoon.

**The Chair:** Mrs Cunningham puts the question.

**Mrs Cunningham:** No, I—

**Mr Poirier:** You like to talk too much. Okay, go ahead, Dianne, talk. Tell us what to do.

**Mrs Cunningham:** I am trying to get my head in gear around this one. This was another one where the Ontario Chamber of Commerce—public input, Mr Wessenger—said: "Extend the time within which the employer must inform the director of an interruption of payments. Large employers may have payroll systems which require up to 21 days to identify an interruption of wages." I am not sure whether this one was overlooked by the government, since it responded to all the other ones with requests in some way, but I would certainly be interested in hearing from it. It may have just been overlooked or they may have good reasons for having ignored it.

**Mr Wessenger:** Unfortunately, I do not have the Unemployment Insurance Act in front of me, but I understand there is a time period when termination of employment

occurs that you have to provide the information to the employee on termination for UIC purposes, and I think it is five days. So I think we are being more than generous when we are giving 10 days here, which is double what is required under the provisions of the Unemployment Insurance Act.

**Mr Sorbara:** Mr Chairman, beware of NDP parliamentary assistants claiming that the government is being generous. Beware. I am just saying beware.

**The Chair:** Thank you for that advice, Mr Sorbara.

**Mr Sorbara:** Or any government when it claims that it is being generous. With what? To whom?

**Mrs Cunningham:** I heard the words "I think," and I am just wondering if we should be getting more information on this. It is the same old question Mr Sorbara usually asks around consistency of legislation, and I do not think the word "generous" is a good word. I think what we want to do is be practical and respond appropriately to the concerns of the Ontario Chamber of Commerce, which of course has a number of groups that participate in its deliberations. So I just want to hear why not, and that answer did not satisfy me.

**The Chair:** You do not feel satisfied?

**Mrs Cunningham:** No, I do not feel satisfied.

**The Chair:** Mr Wessinger, would you like to respond further or—

**Mrs Cunningham:** I do not feel satisfied with the response.

**The Chair:** —on to Mr Sorbara?

**Mr Wessinger:** It just requires a letter to the director's office, which is a very simple procedure. There is no special problem with it; no forms to fill out. It just has to be a letter, "Dear Sirs, please be advised that so-and-so is no longer an employee," and it would normally be included at the time the last payment is made.

**Mrs Cunningham:** If you are not happy with what the Ontario chamber said specifically that "Large employers may have payroll systems," I suppose they at that point in time, 21 days later or whatever, because they have used the word 21 days to identify an interruption of wages—how do we respond to these large employers? I just want to hear from the staff on this. How does this really work? They raised it as a legitimate concern.

**Mr Carr:** Do they just break the law or somehow circumvent it?

**Ms Feldman:** Any contravention would have to have some sort of intent, and if those types of large employers indicate that because the way their particular system is set up that was absolutely the minimum time that notice could be given, then I do not think any court or, for that matter, the director would imply any liability on their part in those particular cases.

**Mr Sorbara:** Surely what we want here is not an arbitrary figure but we want to get notice to the director as soon as possible of the interruption of payment. But one of my problems here is that this section assumes that the only interruption of payment arises because, in effect, the debtor—I guess we have to change this to payor, do we not?

You did not bring an amendment forward in that regard, but have you got one on that for the whole act?

**Mr Wessinger:** Yes.

**Mr Sorbara:** You have said the interruption of payment, I guess because the payor is no longer working there. Can our officials tell us what happens in a situation like City Express? Who is liable in a situation like City Express where people are just not receiving paycheques?

Interjection.

**Mr Sorbara:** It may end up being a bankruptcy, but lots of times employers say, "Thanks very much for a good week's work. Sorry. There's no money in the bank and you're not getting paid."

**Mr Wessinger:** The employer would be in breach, not only in his obligation to his employee but also to the director.

**Mr Sorbara:** Liable for that money, personally liable for that money?

**Mr Wessinger:** The employer would be if he did not eventually pay. It would be a question of eventual payment obviously, and if the money was owed to the payor, assuming that.

**Mr Sorbara:** Who has priority in a bankruptcy?

**Mr Wessinger:** There is a limited priority for three months, I believe it is, on a bankruptcy, and also there is the obligation of the directors of the company for—

**Mr Sorbara:** Just in that regard, the parliamentary assistant reminded us that shortly after the election the Premier promised that in all insolvencies and bankruptcies Premier Bob is going to make up the wages if the employer does not make up the wages. By the way, just in that regard, they laughed all the way to the bank because it is usually the bank that takes the hit in that regard on their security so that employees can get their paycheques. But in any event, Premier Bob said, "We're going to make all that up." In the case of City Express, if the employees did not get their wages, "We're going to make that up. We're going to have a wage protection fund."

Now, in this wage protection fund, and in this situation, who gets it first? The employee or SCOE?

**Mr Wessinger:** This is purely a guess on how it would happen, but I would assume that payment out of the wage protection fund, when it comes in and assuming it is retroactive, would be a lump sum payment, not the regular interval, so it would not be subject to deduction under this. As a support deduction, it would have to be subject to a garnishee, quite frankly.

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**Mr Sorbara:** By the way, just on that wage protection fund, can anyone here enlighten us as to when that is going to come into place? The government promised this thing a while ago. There are a lot of people who are waiting out there for the money. Does anyone know about that? Mr Chairman, do you know?

**The Chair:** I do not, but I do not think it is directly discussed in this amendment.



**Mr Sorbara:** It is, because this deals with interruption, and one of the really big interruptions these days is insolvencies and bankruptcies. That is the bad news and that is why this thing is not going to work very well. Because of these insolvencies and bankruptcies, payors are not going to have any pay coming in so that they cannot have their automatic deduction because they have no employment. Fix the economy and you will fix all of this stuff.

**Mr Mills:** A point of clarification. This—

**Mr Sorbara:** Do you have an answer for me on the wage protection fund?

**The Chair:** Mr Mills?

**Mr Mills:** Afterwards.

**Mr Wessenger:** Let Mr Mills speak for the cabinet.

**Mr Mills:** A matter of clarification on this amendment. If my memory serves me right, there was a delegation here from Dofasco and they mentioned something along the lines that it took 21 days before they would see if there was any disruption in the pay. Do you not remember that?

**Mr Sorbara:** I support you, Gord.

**Mr Mills:** They would not know if anything untoward was happening until at least 21 days. I am just wondering if this is the intent of this amendment, to take that into consideration. Is that, Mr Chairman, through you to—

**The Chair:** Through myself, to Mrs Cunningham?

**Mr Mills:** —to you, Mrs Cunningham, is that one of the reasons for this amendment? I remember that when Dofasco came they mentioned the fact that this could go by for 21 days before they would ever notice. Is this the point of this amendment?

**Mrs Cunningham:** Yes, we are trying to respond to that. I could not find the 20 February; I have got the 12 February and it did not have—who was Dofasco with?

**Mr Carr:** The Canadian Payroll Association.

**Mrs Cunningham:** The payroll association, and that is what we were trying to do.

**Mr Mills:** So you are responding to that.

**Mrs Cunningham:** They were not the only ones—

**Mr Mills:** But they said specifically 21 days, if I remember rightly.

**Mr Carr:** Their computer system was 21 days.

**Mr Mills:** Yes, their computer system. The clarification I am looking for then is that notwithstanding this, you would take into consideration that type of arrangement like with Dofasco without penalty. Is that what we are hearing?

**Mr Wessenger:** What I think has been mentioned by staff is the fact—I am speaking on behalf of the administration—that the administration would not seek to penalize an employer who is acting reasonably within the circumstances.

I think this whole question is again one of balance, and the problem is that you are balancing the interests of the system working well and the interests of certain employer groups that may have problems complying with the particular 10 days. But I would be concerned if you extend the time period too long. You will have those people who do not like the legislation, who will use the 21 days, use the

maximum period, to not notify. So I think on balance, particularly since it is indicated that discretion will be used wisely in the administration of the act, that we should retain the 10 days, because I think on balance that is more important.

**Mr Mills:** In conclusion, that is what I wanted to hear: that discretion would be used. I can support what you are saying under those conditions.

**Mr Sorbara:** It is too bad that Mr Mills gave up so easily. I think he was on a roll there.

We do not know that discretion is going to be used wisely. A couple of days ago in this committee we had a motion that simply said, "Would you treat people fairly and equally?" It was Mr Elston's amendment. He was not here for the discussion, but it got defeated. I do not see a government amendment saying, "Discretion not to be used wisely in this act." So maybe I have a different solution or at least I want to propose it to you, not through an amendment yet, but just to put it out on the table for consideration.

The problem here is that the 10 days is arbitrary. The differences business to business are as different as the four seasons. You never know; in construction it is one thing; in Dofasco it is another; when it is a small little service out there it is a different thing. Some people have pay periods where you get paid every month; sometimes it is every 10 days; sometimes it is every week. It is different. Why not have a provision that says, "As soon as you know that it's going to be interrupted, and in no event beyond 21 days, you shall inform the director"? So "You inform the director when you know but we expect you to know within 21 or 30 days." Is that so terribly unreasonable? Does it make—

**Mr Wessenger:** The other thing that should be remembered is that this applies not only of course just to the income source but also to the debtor.

**Mr Sorbara:** Sure. But the debtor does not carry around the Child and Family Support Act with him for bedtime reading. He does not know about this.

Interjections.

**Mr Sorbara:** Maybe some of them do. Let's see if there are nods of agreement. We just need some nods of agreement from the government party. Would you support an amendment that said, "Let the director know as soon as you are aware of it or in any event within 10 days"? That is being so fair.

**The Chair:** That discussion cannot be recorded. Mr Carr?

**Mr Carr:** It does not really matter. I guess—

Interjections.

**Mr Sorbara:** Just for the record and because it cannot be recorded, they all nodded "no." They do not think that we should have put in a little flexibility.

**Mr B. Ward:** Point of order: I never nodded.

Interjections.

**Mrs Cunningham:** It was a sleeping nod, Mr Sorbara.

**The Chair:** Mr Carr, you have the floor, sir.

**Mr Carr:** The situation I am thinking of now relates to a small business person. In going along the lines of an example, we have somebody who runs a Becker's store and runs into this type of situation. I am more worried, I think, of small individuals running small companies. The statistics that were given when the Canadian Federation of Independent Business were here were saying that a large, large percentage are small. Now we are going to run into a situation where the guy in the front lines or woman that is running the Becker's store might not have adequate time. They do not have a payroll department where they can say, "This needs to go out." I can personally see somebody running, let's keep the example, a small Becker's store that is actually going to probably forget when somebody is terminated for whatever reason, or the business goes down and they have to lay off one of their clerks. What I see happening is somebody filling out all the forms that would come with unemployment that they have to do. They will do that because the person who has been laid off will be encouraging them to do it and reminding them to do it to get their unemployment. But some small business will potentially even forget about this and then have to scramble around to meet the 10-day requirement. That is more of what my concern would be. And I like maybe even the situation that was introduced there that hopefully we could get the situation right away for those that could do it. But I see some real problems for some of the small business people trying to meet this 10 days.

If the person running the Becker's decides to go on a holiday or whatever—couple of days off—they are going to have difficulty meeting this requirement. I think sometimes we are putting undue pressure on the small businesses, thinking, "It's Dofasco or it's Stelco; they've got a payroll department that will have procedures in place," and when somebody goes, they do not forget to notify regarding unemployment, and then SCOE needs to be notified as well. I just think with the 10-day time frame we are looking at, it will hurt some of the small-business people, like my example at Becker's.

1510

That is why I would say to the parliamentary assistant, look at the time frame expanding that, because small-business people cannot react as quickly as the Dofascos and the Stelcos of this world, and I am very fearful that we are going to put undue pressure on them in the 10 days to get all this information done, notwithstanding the fact that we are trying to make it simple for small business in terms of one page, so that they can notify them. Small businesses do not have form letters that can go out that easily. I would take the view—and the Canadian Federation of Independent Business actually wanted it to be a phone call, where they would remember to make a phone call. I am against that because I like to have everything in writing. If you get into the phone-call-type situation, you can say, we did tell you, no, we did not. At least with the writing, you do have some type of hard facts in writing.

**Mr Elston:** That is if Canada Post delivers it.

**Mr Carr:** I think the compromise would be to keep it in writing, so that we do have things with hard facts, but

that we do give some leeway for some of these small businesses that are finding it difficult to compete as it is. That is why I would be in favour of it.

**Mrs Cunningham:** I think most people in this room would agree that we are trying to accomplish something here with subsections 15 and 16, actually, although we are not referring to it in the amendment. I would like some wise heads to prevail. This is a nightmare. Mr Wessinger, subsections 15 and 16 are a nightmare. I know we are trying to get something done here, but you can imagine people that change employment having to put all this in writing. I am sure you considered the writing as opposed to phoning in. For every job they have nowadays—people have more than one job at a time. It is just a nightmare, this whole section. I am sure you have thought it through carefully, but it is a nightmare. I cannot imagine anybody wanting to get married. Why bother? This is a nightmare.

**Mr Wessinger:** The worst nightmare, we do not know, we never hear.

**Mrs Cunningham:** Even if they are not—it is just awful. This whole thing is just awful. I thought extending the amount of time gave some leeway. There was lots of input on this, by the way, and I think Mr Carr has already mentioned it: phoning instead of writing, and extending the time on both subsections 15 and 16. They wanted us to define "interruption of payments." The only thing we could think as we looked at this seriously was to increase the amount of time. That was the only thing we could think about. They even asked us if we would put in law that persons should be informed of their duty to have to do this in writing at the time their pay is interrupted. That was one of the briefs we heard or maybe it was a letter I read. It is just a nightmare, this whole thing, and that is why we thought the least we could do, given some seven different ideas for improving or making subsections 15 and 16 more reasonable—that is why we extended the date. It really is as simple as that. I am just wondering if the parliamentary assistant or the staff has considered all of the input we got around those two sections, where we were asked to do seven different things, and we have done one.

**Mr Wessinger:** Basically, the way this is going to have to be dealt with is through education materials sent out to employers. Obviously, this is going to be sent out to every employer about his obligation to notify at the time the—

**Interjection:** We will have to educate the Bar.

**Mr Wessinger:** Yes, we will have to educate the Bar as well. We agree there is—

**Mrs Cunningham:** Actually, the Bar said an income source should be notified of this obligation in advance of the duty being imposed. I am not sure they were telling us to write it into the law. We are hoping that is not what they were doing, but they obviously saw it as a concern. Our only way of meeting the concern after listening to a lot of briefs and reading a lot of correspondence was, in good faith, to extend this amount of time. Ten days is not very long to sit and write letters and get them somewhere, both when your payments are being interrupted and when you resume, which is subsection 16. We should have been consistent and



said the same thing there. I really think you should think more about this.

**The Chair:** Thank you very much, Mrs Cunningham. Further discussion? All in favour of the motion of Mrs Cunningham? Opposed?

Motion negatived.

**The Chair:** Page 21, Mr Kwinter moves, on behalf of Mr Sorbara, that section 3c of the act, as set out in section 3 of the bill, as printed, be amended by adding the following subsections:

“(15a) No notice under subsection (15) is required for an interruption in payments that arises from circumstances that are customary in the relationship between the income source and those persons to whom the income source makes periodic payments of the same class as are made to the payor.

“(15b) The income source shall give written notice in advance to the director’s office of the details of any interruptions described in subsection (15a) that are likely to occur with respect to a payor.”

**Mr Kwinter:** I would ask Mr Elston to explain the basis behind this amendment.

**Mr Elston:** Actually, this amendment was drafted in relation to a practical concern that I raised during the hearings, that every time a person has his or her work interrupted, which it is sometimes in occupations related to construction, for a period of time, a formal notice must be sent by the employer to indicate that there will be an interruption in pay, sometimes for stints of prolonged weather-condition interruptions, meaning that the person, although still employed, is not working and therefore does not receive pay. So every time a weather problem might arise, particularly if it stretches over the course of an entire pay period, notice officially would have to go to the SCOE department, or at least to the order enforcement department; and the people who are normally in the business of construction would be forced to do a whole series of notifications about when the person started, when they stopped.

Weather is one instance. Another instance is where there is a holdup in the delivery of materials, and sometimes that has occurred. It probably will not be a problem now, but I do note from firsthand experience, even when I was working in my school days, in the summer, that we often would have to stop the work while specialty materials were being constructed at another place ready for delivery to the site. That meant that we stood down from employment. We were still ready to go as soon as materials arrived but unfortunately you do not get paid if you do not work.

In this situation, all this is trying to do—and I know the words are a little bit circuitous in a way because you cannot say, when someone is not working because the materials do not get there, you do not have to give notice. This is what the section is attempting to heal. It is just taking some of the paper onus off the employer, and I think that it is rational not to force the person to keep sending in notices when interruptions are so temporary as to be part of the problem with the conducting of business like construction, for instance.

**The Chair:** Thank you, Mr Elston. Any further discussion? Mr Wessenger?

**Mr Wessenger:** Yes, I have problems with this, because it really is too vague. The other thing, I think—

**Mr Elston:** Make it less vague for me, then. Do you agree with the point? You are going to have people sending in a whole pile of notices that you are going to process, basically.

**Mr Wessenger:** It is only interruption of payment that is relevant. Just because somebody is going to be laid off for two or three days because of weather, that is not—

1520

**Mr Elston:** No, no, I am not talking two or three days. You can be laid off in this day and age because of extended cold spells this time of year. People work 12 months of the year now, except when it becomes too bitterly cold for people to do high steel work, for instance, and you could be off for two weeks at a time and missing entire pay periods. It is not just a snow squall or just when it is too wet for a period of a couple of days. It is because of the nature of the changing construction that we are doing it.

It used to be you could not work much past the first part of November just because you had problems with the materials that were used in construction. Not now. We are year-round operators now. But cold does have a substantial effect on how long people can be employed. So it is not just a two- or three-day period. That is not a problem because if I was working for three days out of five I am still going to have some money paid to me, and if it was my income source, they would take up to 50% of whatever that three-day pay was about. I am talking about more substantial time.

It also is important with respect to materials. This last four and a half years have seen a number of situations, particularly with respect to the delivery of brick, where individuals had to wait for shipments of brick because of the overheated building industry from some places in the southern States on occasion, just because there was no supply. Those people did not work if they did not have the building materials. It was not that they were unemployed, but it is the nature of the business. That would have resulted, under the current situation, in the employer—sometimes a very small bricklaying subcontractor—having to give notice for all of the people, or the number of people who worked for them who were on support deduction orders. He would have to submit the notice that the bricks did not arrive for two weeks, and he would have to resubmit it for each pay period, presumably. Or if it was for a two-week delay he would have to tell them that there was an interruption and then he would have to say when it was starting.

So it is a very practical one. If you want to dismiss it, perhaps it is something that you could take into account in the regs or something. But I want your acknowledgement that it is a real and practical problem for organizations, particularly small business who now, believe me—after being in government for five years—really are concerned about the paperwork. It may not seem like much of a notice on this one item, but they are obligated on so many items. They just got hit with the new payments—increased

payment—for unemployed insurance and they have payroll deduction which was a big problem for them last year, and they have a whole series of other problems which I think have to be acknowledged.

If you do not want to pass this, that is fine, but I really would like your acknowledgement that you will try to address it at least in the regulations.

**Mr Wessenger:** I had hoped there would be some flexibility—

**Mr Elston:** No, you cannot hope for flexibility and you cannot pray for flexibility because we are writing the words.

**Mr Wessenger:** No, but I think there would be this aspect that if the interruption is very short, by the time it came to the attention of the branch that there was a non-payment there would be another payment in, in which case the matter would not be—

**Mr Elston:** But there is a violation of the act which, under the way we have written this thing, these people can be pursued. Perchance, if you end up having three or four of these arising with the same employer, it could look like the employer is, without reason, not complying with the provisions of the act.

**Mr Wessenger:** Yes. I think it would be easy for the employer—for instance, say one week he is off, okay, so a weekly pay period. He does not remit the payment. The next week there is a payment. The employer just says, when he sends in the payment, “Please note so and so was off that week.” That complies with the provisions; in that situation it definitely does comply.

**Mr Elston:** Within 10 days? That would be 14 days, perhaps, he would be outside the period, might be liable?

**Mr Wessenger:** Theoretically.

**Mr Elston:** But, you see, that is the whole problem with legislation, when the practice does not match the theory and actually the words in here. Somebody who was particularly keen on using the act to deal with emotional problems as a result of family breakup can force people to abide by the letter of the law, and at least inspire court action. One of my concerns about this type of legislation is that it will be, and can be, used by people who feel aggrieved, by forcing people to carry out their obligations under the act.

**Mr Wessenger:** No. In this situation, it is only the director who can—

**Mr Elston:** No, but the director can be compelled to perform her duties under the legislative options that are here. She is obligated—

**Interjection:** Compelled by whom?

**Mr Elston:** I could, as a citizen, if I acted, for instance, on behalf of one of the people entitled to receive payment. Are you telling me a public servant cannot be compelled by legislation to carry out the obligations of legislation?

**Mr Wessenger:** Yes.

**Mr Elston:** They cannot where there is no discretion?

**Mr Wessenger:** By the legislation she can be compelled. The legislation compels her.

**Mr Elston:** That is exactly right, and a citizen can compel a person to carry out her or his public duty. When it is written in the legislation, you cannot just ignore it. People have been prosecuted for ignoring the duties under pieces of legislation and all I am telling you—

**Mrs Cunningham:** They have lost their jobs and gone to jail. They are on unemployment and you and I pay them to stay home.

**The Chair:** Do you want to speak on this—  
Interjections.

**The Chair:** Do you want Ms Feldman to speak on this?  
Interjections.

**The Chair:** Mr Wessenger’s assistant, Ms Feldman.

**Ms Feldman:** The duty is—  
Interjections.

**The Chair:** Could we hear from the AG’s counsel, please?

**Ms Feldman:** The duty is to enforce in the manner that appears practical to the director; and we had some discussion on that point yesterday. As far as the offence provisions are concerned, again they incorporate intent and in a situation such as the one you described, it would be the director, and only the director, who can enforce the support deduction order and all of the other things that come along with the enforcement of that support deduction order. If, in the director’s view, it was not practical to pursue contravention of 3c(16) or 3c(15), then that I believe would be in the director’s mandate to make that final determination, despite all the good arguments that you might advance as a counsellor or private citizen.

**Mr Elston:** If I have an opportunity to pursue my family law practice. The difficulty is, all I really want is some effort to try to eliminate as many of these roadblocks as possible. Most of the people, or a good number of people, will feel that there are some onerous duties and obligations under this if it is well worked out, but in situations where people sort of say “But this is my normal business, do I have to tell those people? Am I going to be in violation?” the answer, if they went to a solicitor, would be: “The act says that if you don’t give the notice, even though it’s rational, the director can come after you. So you had better go home and fill out your paperwork and you had better send it in.”

There is no flexibility built into the statute. As much as I think that the PA has said he hopes it is worked on flexibly, that is not the point. There is no flexibility. That is the point of the problem. Maybe there is some place where there is a general ability or a general power of the director to be “flexible,” but I have not seen it. She is obligated—or she will be obligated when we pass this stuff—to do the work.

**Mr Wessenger:** She has to. She has to be flexible within the realm of practicability; we will put it that way.

**Mr Elston:** But there is no provision that allows her that. I am serious. She is required to do what is right and if somebody violates this statute—for instance, if a client of



mine was two days late in making a payment to SCOE, or whatever it is going to be called—sorry, the Child and Family Support Statute Law Amendment Act—if they are going to be late two days in making the payment, they are defaulting. They will be seen to be a defaulter and they will go on the statistics as a defaulter. The employer who does not tell about interruption, for whatever good reason, is technically violating the act and is subject to prosecution. In fact, I can see it being entered on the file “This employer did not inform us of...” It will not matter exactly why, but there can then be a record built up on the performance of that income source with respect to remitting under the provisions of the act.

It is not worth while pursuing this; I do not want to go on too long, but you cannot wish flexibility into something that does not contain a clause that allows flexibility. That is all I want to tell you. Believe me, where people are poisoned by the problems associated with splitting couples, do not underestimate what could be done to pursue people. If you want to put a clause in that says “The director shall be flexible in enforcing the provisions of the act,” then that gives her some discretion. But until you do that she is obligated, in my view.

1530

**Mrs Cunningham:** I just want to say that I thought this is a valiant effort on behalf of Mr Elston, which I will support. You might even get it through yet. But to my way of thinking it makes good sense and all that Mr Elston said was, first of all, he would like to see this as part of the legislation. He would certainly like to see some acknowledgement of the intent for it in the regulations. Personally, I think there are enough of these kinds of examples in our province today, because the workforce is more flexible. Some people work at certain jobs for two months and leave them and come back four months later. What we are doing by not passing this is giving more people opportunities to just break this law. Of course, I think these sections are very, very difficult. I understand that we may have to give it a go, but I think this is an opportunity to show some good faith to people who are in situations which most of us in this room would not consider usual.

But I think that these situations are prevalent across the province, especially with the changes in employment patterns of our society, and especially of young people. I think a perfect example was the person who was building a street, who walked up here to give his presentation and he said two things. The first thing he said was, “If you don’t give me the opting-out part,” which we will deal with later, “I won’t have this job when I’m finished.” Second, “I work on three jobs right now and I move around from time to time.” This is an example of where the director’s office could just be informed of this particular person’s work pattern, given this time of year, and it would save an awful lot of anxiety. You know, Mr Chairman, what we are trying to do here, and I think it is worthy of serious consideration.

Motion negatived.

**Mr Morrow:** Mr Chair, may we have a 10-minute recess?

**The Chair:** All in favour of a recess?

**Mrs Cunningham:** I have to know why. Does this have to be unanimous or is it by a simple majority?

**Mr Morrow:** They want to smoke.

**Mrs Cunningham:** What about the three cents per cigarette? You had better start thinking about that. If you are going to represent the public, you should come here healthy and—

**The Chair:** All in favour of a 10-minute recess? All opposed? Recessed, 10 minutes.

The committee recessed at 1533.

1546

**The Chair:** Mr Wessinger moves that subsection 3c(19) of the act, as set out in section 3 of the bill, as printed, be struck out and the following substituted:

“(19) If an income source is required to make payments to the director’s office under a support deduction order and the income source receives a garnishment notice related to the same support obligation, the income source shall make full payment under the support deduction order and the garnishment shall be of no effect until the income source has received notice from the director that the support deduction order is suspended or terminated.”

Motion agreed to.

**The Chair:** Mr Wessinger moves that the French version of subsection 3c(20) of the act, as set out in section 3 of the bill, as printed, be amended by striking out “dette” in the fourth line and substituting “créance.”

**Mr Elston:** Mr Chair, I wonder if I could have the parliamentary assistant read the entire section in French so we could get the—

**The Chair:** I am not sure that his cadence would add to the deliberations, Mr Elston.

**Mr Elston:** Just trying to be of some assistance.

Motion agreed to.

**The Chair:** Mr Wessinger will move an amendment to which, I believe, a Liberal amendment may come forth, so Mr Kwinter, perhaps you could present that later. But first the amendment comes.

Mr Wessinger moves that subsections 3d(1) to (5) of the act, as set in section 3 of the bill, as printed, be struck out and the following substituted:

“3d (1) A court that makes a support deduction order may immediately make an order to suspend its operation or the court may, on motion, subsequently suspend its operation.

“(2) The court may suspend a support deduction order under subsection (1) or subsection 3k(6) only if,

“(a) it finds that it would be unconscionable, having regard to all the circumstances, to require the payor to make support payments through a support deduction order; or

“(b) the parties to the support order agree that they do not want support payments collected through a support deduction order and the court requires the payor to post such security as it considers adequate and in accordance with the regulations.

“(3) The following shall not be considered by a court in determining whether it would be unconscionable to require a

payor to make support payments through a support deduction order:

"1. The payor's payment history in respect of his or her debts, including support obligations.

"2. The fact that the payor has had no opportunity to demonstrate voluntary compliance in respect of support obligations.

"3. The fact that the parties have agreed to the suspension of the support deduction order.

"(4) For the purposes of clause (2)(b), security shall be in a minimum amount equal to the support payable for four months and the security shall be in money or in such other form as may be provided for in the regulations.

"(5) The parties to a motion brought to suspend the operation of a support deduction order are those persons who are parties to the support order.

"(5a) If the payor brings a motion under subsection 3k(6), the director must also be served with a notice of the motion and may appear.

"(5b) A suspension order shall be completed and signed by the court at the time it is made and shall be entered in the court records immediately after it is signed."

Discussion of this amendment?

**Mr Elston:** Mr Chair, if I might just raise the issue, I think we have an amendment on the section.

**The Chair:** Thank you.

**Mr Elston:** I am not sure that I am able to move it, but I would like one of the other members to do it. I just wanted to bring that to your attention before we moved to discussing—

**The Chair:** Yes, certainly, I mentioned that earlier. Mr Sorbara or Mr Kwinter?

Mr Sorbara moves that clause 3d(2)(a) of the act as set out in the government motion be struck out and the following substituted:

"(a) it finds that there is, having regard to all of the circumstances, a substantial reason for suspending its operation."

**Mr Elston:** Mr Chair, do we wish to do all of the amendments inside the one motion at one time, or do we deal with each one separately? Because we have another one or two coming up in the same area that has been just outlined as an amendment. Do you want to have them all introduced at one time and then we talk to each of them, or—

**The Chair:** The clerk informs me there can only be one amendment to an amendment on the table at a time—

**Mr Elston:** One at a time, fair enough.

**The Chair:** —so the other amendments to the amendment would have to be dealt with separately.

**Mr Elston:** It is a very difficult issue to talk about, because it is actually a package of amendments that affect the entire operation of the series of amendments proposed by the government, but I think it is—

**The Chair:** The clerk informs me that you can speak on the matters together. However, we can only deal with one amendment to an amendment at a time, so while we may have a global discussion, the vote would have to be separate and the reference would have to be separate.

**Mr Wessinger:** I was just wondering if there might be some mechanism of including all the amendments in one amendment. Is that possible at all?

**Mr Elston:** No, we cannot do it. You have moved the entire amendment and we are being advised that it is one at a time now, so I guess that is what we have to do.

**Mr Sorbara:** Maybe you start out by giving your speech on what you are trying to do with the amendment. Is that appropriate, Murray? Do you know?

**The Chair:** No, it is not.

**Mr Elston:** Technically not, it has to be—

**The Chair:** No, it is not.

**Mr Sorbara:** Except that we are discussing a very large issue here now, are we not?

**Mrs Cunningham:** It is a big part.

**Mr Sorbara:** Yes.

**Mrs Cunningham:** Can we write the rules?

Interjections.

**Mrs Cunningham:** Do we all agree, because it is a very large part where all of us have made amendments, and I think if we can talk about the whole—

**The Chair:** My understanding is that if there is unanimous agreement, Mr Wessinger could discuss the government amendment first—

**Mr Elston:** Do that.

**The Chair:** —and then subsequently we can discuss the amendments. Can we vote on them in that order?

**Mr Sorbara:** No, we would have to vote clause-by-clause—

**The Chair:** No, we would have to vote on the amendment to the amendment first. However, we can discuss the large amendment first, if you wish.

**Mr Sorbara:** Even before we get to that, do we have agreement on that?

**Some hon members:** Yes.

**The Chair:** Do we have agreement to discuss Mr Wessinger's amendment?

**Mr Sorbara:** Just before we get to that, there was some sense during the conversation that I had with the Vice-Chairman of this committee—no offence to you, Mr Chairman; and the Vice-Chairman and whip, I take it—that if there was some agreement for the government to be flexible here and indicate a willingness to allow this modest reshaping of this—

**Mr Elston:** No, no. The director is to be flexible, not the government. We already understand that.

**Mr Sorbara:** Oh, well, yes, but that is a whole other speech—that we could actually get through this stuff pretty quickly and probably even have this bill wrapped up today. But I have not got any indication yet from Mr Morrow what the government's intentions are here, and it would just be interesting to know.

**The Chair:** Mr Morrow, did you hear the question?

**Mr Morrow:** No, I did not.



**The Chair:** Mr Sorbara, could you repeat it to him, please.

**Mr Sorbara:** I will repeat it for the benefit of Mr Morrow. He and I had some discussion, along with Mrs Cunningham, about whether or not the government was going to be interested and flexible in considering some change in this very crucial component of the bill. Just to put it on the table, these are the sections dealing with the ability of individuals to be relieved of their responsibilities and burden in use of the SCOE system; that is, a payor and someone who is the beneficiary of a support order can get out of the system and not have to use a support deduction order in order to have support flowing.

Now, I did not get an answer back. I just want to tell the committee members, if there is flexibility here, then we could even almost adjourn and negotiate what the new deal is going to be, or we can go through this for hours and hours and hours.

**Mr Morrow:** Basically, when the three of us talked, yourself, Mrs Cunningham and myself, I stated that I would take it back to my government colleagues. Is that not correct?

**Mr Sorbara:** Yes.

**Mr Morrow:** I did take it back and I understand that there is no movement on that.

**Mr Mills:** Oh.

**Mr Sorbara:** You disagree with that, I take it, Gord?

**Mr Mills:** Yes.

**Interjection:** Disagree with what?

**Mr Sorbara:** With his position. No movement.

**Mrs Cunningham:** Yes, we do, because we do not even know why they said those things.

**Mr Sorbara:** Now let's get on with this.

**The Chair:** Mr Sorbara.

**Mr Wessenger:** Or do you want me—

**The Chair:** I am sorry, Mr Wessenger.

**Mr Wessenger:** I thought you wanted to hear my position with respect to this amendment.

**The Chair:** Yes, I thought that was the earlier request. Shall we proceed with your—

Interjections.

**The Chair:** Mr Wessenger, please go ahead.

**Mr Wessenger:** Let us just start. The original bill provided that the court might suspend a support deduction order in the event it was unconscionable, having regard to all the circumstances.

**Mr Sorbara:** What is going to go on here is unconscionable.

**Mr Wessenger:** It is remaining the same except that we have defined what is not unconscionable by indicating the tests of the payor's payment history in respect of his or her debts, including support obligations, the fact that the payor has had no opportunity to demonstrate voluntary compliance in respect of support obligations, and the fact that the parties have agreed to dispense with this support deduction order. So we have defined that as not being

something that the court should consider in the question of unconscionability. The intention is to make it difficult in certain circumstances to get out of the question of support deduction. I think that is fair to say.

There are two specific circumstances here that members should consider. In the first instance, I think it is very easy, in fact, at the initial period to get out of support deduction. There is a very easy way to get out of support deduction before an order for support is made and that is to avoid having an order for support made, because—

**Mr Sorbara:** Hold on. What does that mean?

**Mr Wessenger:** Let us just take—the parties are negotiating about the matter of support, a court application—

**Mr Carr:** Negotiating?

**Mr Wessenger:** Yes, the fact that there may even be a court application made. I will give this example: On the day of the court hearing, the parties agree on the amount of support. The parties have the option at that stage, if they wish, if they agree, to enter into a separation agreement providing for the terms of support. They may withdraw their court order and the support deduction does not apply in that circumstance, unless one of the parties elects to register that separation agreement.

**Mr Sorbara:** Oh boy.

**Mr Wessenger:** So the fact is—

**Mr Sorbara:** Are you advocating that?

**Mr Wessenger:** I am saying that option is available up until that time under the existing situation with respect to the practice of family law, because I have encountered this situation recently. I have seen separation agreements negotiated on the day set for a hearing and the matter be adjourned and subsequently withdrawn because a separation agreement was entered into.

So where the parties are in mutual agreement, they can easily avoid this whole question of support deduction orders. Where they want to be outside the system, they have that option at the time the matter of support is initially to be determined. They have that option. Now where it is—

**Mr Sorbara:** Could I just interrupt you for a second?

**The Chair:** Mr Sorbara, Mr Elston and Mrs Cunningham are before you.

**Mr Sorbara:** Someone should interrupt him.

**Mr Wessenger:** Okay, so let me just—

Interjections.

**Mr Wessenger:** I am just saying—

Interjections.

**The Chair:** Perhaps we could allow—Mr Wessenger does have the floor.

**Mr Wessenger:** This is my perspective of it and I think it will be the way it will in fact work in many cases. Once a court order is made after a hearing, then the parties can only get out of it on the question of whether it is considered unconscionable or, if there is security deposited and the consent of the parties, of course. So once you have a support deduction order, the intention is to make it difficult to get out of that support deduction order, in effect. Those are the two circumstances that I see it arising. In my

opinion, I do not see why members of the opposition are concerned. They are saying, "We want the right for the parties to get out on consent." In fact, they have that right until a court order is made to get out on consent.

1600

**Mr Elston:** I really do have to disagree with that sort of practical advice from the parliamentary assistant. I cannot see a situation where a lawyer would be able to continue practising his or her profession where they allowed a support decision—you know, minutes of settlement are always filed with any final order made by the court, and for a lawyer to allow his or her client to go out unprotected with respect to taking the protections to the nth degree, would be a very novel piece of advice for those lawyers. It is okay if you only take somebody into court to get a separation agreement signed. That is one thing, but you would never allow a person to go through divorce proceedings where you would not make some provision for the inclusion of the separation agreement and the terms of the minutes of settlement for the court order.

**Mr Sorbara:** And that is a support order.

**Mr Elston:** And that becomes a support order. Mr PA, I am afraid that we would end up having a whole series of applications to the law society's insurance claim fund, because people were malfeasant.

**Mrs Cunningham:** Not well advised.

**Mr Elston:** It would not be, in my view, a very discreet act on the part of a legal adviser to allow his or her client to go out without the protection of the court order in stating a sum to be paid for support. They would be back in court almost immediately.

The other problem is this: If they decide to keep that off the interim court order, that is very well and good, but I will tell you that under the provisions of this act a client could then go to the director and say, "Please enforce this for me," and you are right back in the same situation. Your advice, therefore, is, with due respect to your considerable and much longer experience in front of the bar in these matters, not very practical and in fact it does not answer the concerns that you want to deal with. What you want to do is have it both ways. You want to tell people that they can avoid this when in actual fact, from a practical standpoint, not very many lawyers are going to let their clients walk away without some kind of a support deduction order being made in a final court determination. Maybe in the interim it is okay. Maybe even when they first separate, the parties will not want to have any part of the separation agreement brought before the court for endorsement on the record; but anybody who goes through a final disposition of matters with respect to custody in particular and other matters would be malfeasant, as I said earlier. Actually, "stupid" would be a better word. And I just have some real concerns.

**Mr Wessinger:** I fail to see any difference, really, with respect to the matter of support; as you said yourself, it makes no difference in the amount of support, whether it is contained in a court order, when it is a separation agreement because it can be enforced the same way. You are quite right. A separation agreement obligation to pay can be—

**Mr Elston:** But you are telling people that that is the easy way of avoiding this. I am telling you it is not an easy way because, as a person who might counsel the other one to make sure there was no misunderstanding about whether there is an obligation to pay, I would go to the director and advise my client to go to the director. You cannot give people a sense that there is an easy way to avoid this and then say, "But we don't want people to avoid it."

**Mr Wessinger:** But obviously if you, as a lawyer, tell your client, the recipient spouse, to register the agreement with the director, then obviously your client wants to have the advantage of the support deduction order. It is only in the instance where your client did not want that advantage—

**Mr Elston:** No, no, you do not—I am sorry, I had better quit here, because I am just really unnerved by the types of things that will appear on this record as advice to people practising family law as to how you can tell your client you can avoid getting the support deduction order, because it is not practical. It is not, I think, good advice and in fact it would expose the legal adviser to very big problems when the matter blew up, and I just think that you are trying to play both sides of this issue and you are losing both ends of it, because you just cannot have it both ways. You might as well tell the people there ain't no way you are going to let them out of this.

**Mr Wessinger:** No, there are many—probably most family disputes are now settled by separation agreement and not through the process of court. I do not know the statistics, but there is a high level of support matters that are dealt with by separation agreement and not through the court process.

**Mr Elston:** How many of those court orders also incorporate the terms of a separation agreement as part of the minutes of settlement?

**Mr Wessinger:** You are certainly entitled to do that. Of course, you are entitled to do that.

**Mr Elston:** And if you would fail to do that with respect to support, how do you think the legal people would fare?

**Mr Wessinger:** I think we would have to ask the family law practitioners that question.

**Mr Elston:** Now you are—

**Mr Wessinger:** Because of the fact that I have—the only thing I can say is that in my own experience the most experienced family law practitioner, one of the ones I have dealt with, had the habit of using to a large extent separation agreements, and this is—so I am just saying it is my own—

**Mr Elston:** Anybody who practises today will have a lot of separation agreements.

**Mr Wessinger:** Maybe some of you might be critical of his practice, but I am just saying that that was—

**Mr Elston:** No, I am not critical of people having separation agreements. Those things happen all the time.

**Mr Wessinger:** I think they are a good way to resolve the matter.



**Mr Elston:** But they are not the final disposition. When you take a matter for divorce, for instance, the proceedings, you either put that stuff in there or you refer to the separation agreement as though it were part of the order. You have sort of come to a conclusion, I guess, that these people are never going to take that final disposition of the couple's arrangements. I just think that would be an unusual event to have fall. I guess I had better stop here, but—

**Mr Wessenger:** Okay.

**Mr Sorbara:** I just want a supplementary.

**The Vice-Chair:** Mr Sorbara, Mrs Cunningham is first, if you would not mind.

**Mr Sorbara:** With her forbearance, I just want a supplementary comment on Mr Elston's comments.

**The Vice-Chair:** Yes, go ahead.

**Mr Sorbara:** I would plead with the parliamentary assistant to the Attorney General of the province of Ontario simply to reconsider his remarks there, because what he is actually suggesting in the scenario that he presented to this committee is that a lawyer would be advising his client, who was about to be made the subject of a support order and a payor under a support deduction order, that he in fact, if you follow your logic, would be able to buy his way out of a support deduction order, because in that negotiation of a separation agreement the person to be benefiting from the support order would be bought out; no money would be offered so that you would stay out of court. Surely to God you do not want to be advocating that within the context of these hearings or as part of the policy of the branch or the policy of this act. I just think those remarks are unacceptable and all of the things that Mr Elston said about negligent practice on the part of solicitors and inappropriateness of activity are I think unfortunate.

**Mr Wessenger:** The fact is, a lawyer who practises in this area will advise the client of the options and the risks available. The client always makes the decision in that regard. The lawyer merely puts out the options to them and if those clients decide they want to go the option of the separation agreement, they are certainly entitled to do that.

**Mr Sorbara:** A lawyer who does not point out the benefits accruing to, and the burdens arising from, this act—

**Mr Wessenger:** I would agree—

**Mr Sorbara:** —is a lawyer who is negligent in his or her practice.

**Mr Wessenger:** I agree with you, I completely agree with you. There is no question there.

**Mr Sorbara:** Okay, but your remarks seem to suggest that there was an easy way out of this: Just negotiate a separation agreement. How do you do that? Offer more money, promise the world, but please keep me away from this act, and that is scary.

**Mr Wessenger:** I think it is fair to say that certain parties will wish to be outside the act and will try to negotiate separation agreements.

**Mr Sorbara:** I know, and that is precisely the problem that we pointed out when we started discussing this,

that the parties that can offer the most money—because how do you get out of it? Money. You buy your way out, and that is what we do not want. We do not want people to have to buy their way out. That is why we are objecting to the posting of security. That is why we said we want greater flexibility here.

**Mr Wessenger:** I know—

**Mr Sorbara:** Soon Mrs Cunningham is going to show us posters about public education campaigns and buying your way in and buying your way out. This is the risk that we run in the province of Ontario. All I am saying to you here is, measure your remarks and measure the extent to which you want to force people into this law.

**Mr Wessenger:** I think that it is quite unfair to say that people enter into separation agreements because they are buying their way out. I can see many parties, particularly those who are responsible and have got along well together, deciding that they would rather deal outside the act, not because of the question of buying out, but the fact that their relationship may be reasonably good, the fact that to enter into a separation agreement for some parties, they would prefer to see the money directly from the other party, rather than having it go through the administration branch, because—

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Interjection.

**Mr Wessenger:** Yes. The fact is that you are going to have people choosing, for a variety of reasons, to enter into separation agreements. I think a lot of people choose it because they say: "Hey, I don't want the money going to the branch and then going to my spouse. I'd rather have it go direct, and the way I can have it go direct is by entering into a separation agreement."

**Mr Sorbara:** Or, if you are flexible, allowing a support order to be registered, but by agreement of the parties and with the blessing of the judge the people can be relieved. The support deduction order can be suspended. And that is all we are arguing for here, that sort of flexibility. But when we bring that up, when we say, "Let's have that flexibility before the court," suddenly the Attorney General and his parliamentary assistant say, "No, we can't have that flexibility. Only people who can put up money can be able to do that." That is harsh and cruel on the poor and the less affluent in our society and should not be a part of the first New Democratic Party bill coming out of the Ministry of the Attorney General, surely.

**Mr Wessenger:** There were several representations made by certain groups that did not want any opting out. In fact, there were a lot of representations that said there should be no way to get out of it, including the lawyer for the Canadian Bar Association. He really did not want a way out at all.

**Mrs Cunningham:** But you did not listen to anything else he said.

**Mr Wessenger:** And the law union did not—

**The Chair:** Mrs Cunningham, you are on next.

**Mr Wessenger:** And—okay.

**The Chair:** No, I am simply indicating that she will have an opportunity to speak.

**Mr Wessenger:** Okay. And the concern is that if you allow an easy opting out by consent, the recipients will be more susceptible to being coerced to consent, and there is a major concern there of coercion. Certainly in many relationships there is that coercion.

**Mr Sorbara:** That is just political hogwash, I am sorry to say.

**Mrs Cunningham:** Mr Chairman, I think what we have come to here is probably the—

**Mr Sorbara:** A good point to adjourn.

**Mrs Cunningham:** Maybe, but I just thoroughly disagree with the advice that we are being given here and I do not ever want to appear down the road with some of my colleagues that I have served on this committee with, saying that there is really an opportunity to opt out, because if somebody starts thinking about the practical and the realistic scenario that we face when people are in the process of separation and divorce, even initially—and I think the parliamentary assistant brought this to light—in the form of a separation agreement in the beginning, eventually, sooner or later, people get talking about what that separation agreement really means. When you start talking about furniture and ice skates and who is going to pay for camp, people get annoyed. If you have got a lawyer giving you the best advice he can give you, he is going to advise you of all of your options.

The reality is that sometimes, without realizing I think what a painful tool this is for people who intend to pay, to be subjected to these support deductions in their place of employment, and especially the kinds of people we are talking about here—remember, we are just talking about people who are willing or who already have a track record of paying. That is who we are talking about. This argument right now is to give people an opportunity to pay before the income source becomes involved, otherwise their employer. That is the issue, and I think we should be doing that in any way we can.

I can see that the government did respond in its way with regard to the amendments that we are talking about right now. I also listened as the parliamentary assistant advised us that there were presentations that advised us—when we asked the questions, by the way—that there should be no opportunity to opt out. I would advise you, given the letters that we have and given the presentations that we received in public hearings, that there are, at least in my files, some 56 requests for an opportunity to pay and be able to opt out of these automatic deductions that will take place if you have been advised, I think, of all of your options in the event of separation and ultimately divorce.

I will remind you that in the presentations that came before us, often, by the way, there would have been no reason for them to come and say, “I don’t think you should give someone an opportunity to opt out.” The assumption in the legislation that they were addressing us on was that no one would have that opportunity. So it is not perhaps fair. But when we did ask the question of the groups that we would have expected would have taken a tough stand,

four of them did. Those numbers are very different. I am not saying that you should build your response on those numbers, because we did not ask everybody, and where we did, I think we fairly asked people whom we would have expected to take a very strong stand. But people voluntarily, on their own, who wrote letters or came before the committee, asked that these support deduction orders not be automatic.

To sit here today and say that they are not necessarily automatic where people agree that this should not happen, through a separation agreement or otherwise, is simply not good and fair advice. That is not fair, because in the process in separation and divorce, people are angry and they are being advised by their legal counsel that this is an option they have and it is one that they should take advantage of. I feel that, practically speaking, some of the people who are not statistics that we are concerned about, and the potential young people who are not the kind of people whom we are concerned about are going to get caught up in the bureaucracy that causes more anger and more distress and lack of respect on behalf of children. That is who I am here representing today: families and children, and I do not think that this legislation is in their best interests.

I simply know, in checking back on this, with the advice that we get, and following through on the letters that we were sent, that our amendment—and it is on page 32, and there is a Liberal amendment as well. I thank the government for its effort, but it is not good enough. It is not right to stand up and say that this legislation as passed by the government is fair legislation when it comes to families who want to support each other. It is not fair not to give people a chance and an opportunity.

I think the government would show more leadership if it was to accept the amendments that we are proposing and the Liberals are proposing. Let us work on them together instead of coming in here having been given some kind of a marching order, because although our amendments are there, we had not had a chance to talk about them, or to hear your views on why you had put your own amendments forth. To come in and say that there is no flexibility is not in the interest of good committee work. I will tell you now that I took great exception in the past and I will take great exception in the future.

I have sat through these hearings. I have given up the committee that I should be on because I think that this is a very difficult piece of legislation. I was hoping I could be helpful. But to come in with a preconceived policy—and that is all it is, a policy, which we are responsible for. The elected members of this committee are responsible for policy. We have now heard from the public that we represent and there were overwhelming presentations to all of us to say: “Give us a chance. We do not want automatic deductions because of this legislation.” We had some pretty poignant representation on behalf of real people and real families that were coming here—not an easy thing to do—telling us their own stories.

We have not even begun to hear from people who have no idea that we are spending our time talking about this ridiculous process. Wait till we hear from them, and business and industry. This government was elected because it



is supposed to be listening to the people, and it promised it would, and I will be telling the people that I sat on a committee where the overwhelming evidence was that this piece of legislation not be passed in its present format and that automatic deductions not be made. That is what they said.

They also argued that the advice they would get from any good lawyer who is allowing people to understand and take advantage of all options—and these are not normal circumstances. These are circumstances where people are very upset, and sometimes it makes you feel good to take advantage of all the tools of the trade. I know, and I can speak as a person who has worked with families, and Mr Chairman, you have as well, that when you are angry you do not always make good decisions. Once you are in the system, it is very difficult to get out of it, and this bill would not allow you to get out of it based on a good track record; not at all.

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So I am saying, at least do not stick them in the system if they make regular payments. I think I heard Mr Morrow come here and say—he did not use these words but he said—“There is a policy decision here that we’re not going to be able to discuss. There’s no change from the government’s point of view.”

**The Chair:** Would not Mr Morrow’s comments be on the record in that regard?

**Mrs Cunningham:** Yes. But since he just lit up like a light bulb when I made the statement, certainly if he did not I am the first person to say, “Great.” If it is otherwise and I heard him incorrectly, let us continue. But if we are going to continue, I see some four or five different amendments that we should be discussing as a package, as we did earlier today, and come up with a solution that is meaningful to families.

Mr Chairman, perhaps it would be appropriate for Mr Morrow to jump in right now and explain what he did try to say there.

**Mr Morrow:** I think what I was trying to say is that we obviously are going to sit here and listen.

**Mrs Cunningham:** And what?

**Mr Morrow:** And listen.

**Mrs Cunningham:** But if we finish by the end of the day and we lose this thing, unless you have somebody with wings on who is going to come flying through that door, I do not see me budging one of you at this moment. I have not sat on committees like this in the past. If you have an opportunity to huddle like we do—thank God for opposition every once in a while—and make common-sense decisions based on input and good advice—and I respect the staff and what they are doing—but this is a policy decision that is our responsibility, not theirs.

**Mr Morrow:** Mrs Cunningham, I cannot speak for the rest of my colleagues but I can speak for myself that I am listening.

**The Chair:** Further discussion? This is a general discussion, I believe, into—

**Mrs Cunningham:** I would like to hear from the members of the committee who are here on this point. I think it is only fair. We have all been struggling together, so let’s hear.

**The Chair:** If I can go back to this, this is a general discussion—

**Mrs Cunningham:** And I will miss my House leader’s meeting. I might be giving everything away there.

**The Chair:** This is a general discussion not only on the government amendment, as I believe it, but something of the subsequent amendments to the government amendment. Mr Fletcher?

**Mr Sorbara:** On a point of order before Mr Fletcher begins: My understanding was that we were going to adjourn at 4 o’clock. Is that no longer the case?

**Mr Poirier:** There was no agreement to that.

**Mr Fletcher:** No one agreed to that.

**The Chair:** There is no agreement. If someone wants to put a motion forward in regard to adjournment, we could certainly entertain it.

**Mr Sorbara:** I want to hear from Mr Fletcher first. There are hours to go on this.

**Mr Fletcher:** Just some comments about what we are doing here as far as the kids are concerned, the children and the families. In my riding of Guelph there is an organization known as Kids Can Play. The organization pays money to certain organizations, sports organizations, piano lessons, dance lessons, so that children can participate in the community activities.

The clientele that they contribute to are mostly—I would say 90%—single-parent families. Again, that 90% would also show that most of these single-parent families are headed by women. There is not enough money in the family to allow these children to go out and participate in activities that normal family members, with two parents, can go out and participate in. I think this organization raised something like \$45,000 and spent it all last year in the city of Guelph, a population of about 86,000 people, to assist these children.

We have seen in the past that past regulations have not worked to allow for payment to help these kids who are suffering, who do not have the same advantages as the normal family. I think it is time this piece of legislation had some teeth in it, and I honestly do believe this is putting teeth in this legislation.

Every government, when the Conservatives were in power, when the Liberals were in power, left its mark as far as pieces of legislation are concerned. And that is what we are doing. We are leaving a mark. History is going to tell us whether that is happening.

**Mr Sorbara:** Don’t say this is your mark, Derek.

**Mrs Cunningham:** This is not a mark you want to remember.

**Mr Fletcher:** What we are doing is trying to put some teeth into the legislation so that, as Mrs Cunningham said, the children are not going to suffer. That is what we want to do. That is the way we feel, as a government, this is what we have to do.

As far as being rigid on this piece, yes, right now, my personal opinion is, yes, we are rigid on this piece.

I listened to some of the people who came, and some of them were the husbands, who were talking about "Please do not keep us in," and yet one of them I remember distinctly saying, "Oh, yes, I've been behind on my payments before." Who suffered? He was three months behind, four months behind. Who suffered? But it was a flippant statement, "Oh, yes, I've been late before."

If that is the attitude, that yes, I can be late any time but I will make it up somewhere else, you do not make it up to the people who are being affected by not receiving the moneys. That is what we are trying to do, make sure that it is happening. If someone is a good payor and both parties recognize he is a good payor, they do not have to use it. I think that is something that is already there.

**Mr Sorbara:** Are you supporting that? Do you guys agree with that?

**Mr Fletcher:** I said that they do not have to. If they do not want to apply for it, they do not have to.

**Mr Sorbara:** You supported the kick-out provision then, for the record, Mr Chairman.

**Mr Fletcher:** No, I did not. I did not support the kick-out phrase. If they do not want to get into the system, they do not have to—and in another way.

As I was saying, and I am going to go back to what I said, after looking at the posters, I have no problem with the posters that came from Florida as far as I am concerned. Because if it comes down to that where we have to actually go out—

**Mr Sorbara:** The great big jurisdiction of the United States of America.

**Mr Fletcher:** —where we would have to go out and force people to actually be caught for this, then perhaps that is what we have to do. But there is absolutely no way that women and children should have to suffer because of the lack of finances because some person said, "Well, I'm not going to pay," and can be flippant about it and can get away with it. As far as I am concerned, that is not right for society and it is certainly not right for children.

**Mr Kwinter:** I think there is a difference of opinion here. We just heard from Mr Fletcher where he has no problem if these people agree not to enter the process. From what I have heard not only in the public hearings but in our discussion of clause-by-clause, I have not seen that particular interpretation.

I do not think there is any question on behalf of any of the parties—and by this, I am talking about the political parties—that they support this bill. It has already got support in principle and we are going through the clause-by-clause to enforce it.

On the other hand, I can tell you that the one issue that came through loud and clear during the public hearings were those spouses who have been making regular payments, have never missed and suddenly find that the state is now intruding in their private life. Without question, if someone is in default, if someone has a history of not making regular payments, I have no problem. I think it is important that you understand that one of the things that

has disturbed me, and we have tried to correct it somewhat by changing the term "debtor" to "payor," is that somehow or other these are bad people. When you consider that—and I tried to get the exact figure—nearly one out of two marriages breaks down, we are talking about a very, very substantial number of people, which statistics show is going to increase over the years and not diminish.

1630

So it is almost going to become a way of life, and I can tell you that one of the most negative things in people's perception of government is that it intrudes too much in their life. But the government is there to serve the people and not to create problems for them, and that is what they want. You are their representatives. My concern is that we are providing legislation that leaves no discretion, leaves no ability for someone who is a responsible person, who has been making regular payments, who takes his responsibility seriously, yet under this provision must go through the courts, must have his personal business made known to one, two, three or untold numbers of people in his work organization without any provision for having that person, based on his record as a responsible, financially capable person, get out of this system. It would seem to me that this is something that we should be addressing.

Mr Chairman, I would suggest that this is not something that is going to be resolved in two minutes. I do not think it is going to be resolved in two hours. Rather than have the discussion take place now and then have to be terminated and be renewed again in weeks or whenever it is that we get back, I would suggest that we adjourn so that when we discuss this we can discuss it in one entity so that we do not get this disjointed discussion that we will have to retrace anyway. So I make that motion.

**The Chair:** Mr Kwinter moves adjournment. All in favour of adjournment? All opposed? Defeated.

**Mr Sorbara:** I thought we were going to adjourn at 4 o'clock.

**Mr Carr:** I guess the point I would make in reply is that we all are trying to get more—

**Mr Sorbara:** Gary, could you keep talking until I get back?

**Mr Carr:** I will try. I am not quite like you.

**Mr Sorbara:** I will be right back.

**Mr Carr:** I am not quite as good as you.

Now that he is out, and I do not want to ramble on like he does, either, but one of the motions that was defeated was a Liberal motion that talked about putting more money into the hands of the children, and I guess it was motion 7, which talked about raising it to the poverty level. So on the one hand we are saying that here is a motion that will put more money into the hands of the kids, and yet you vote against it. And yet when you have something else that looks like you give a provision to opt out, then you say, "No, we want to put more money into the hands of the kids, so we can't have any opt-out provisions." You cannot have it both ways. There are too many contradictions there.

I would refer to our motion. If you really want to make sure that people pay, I believe that motion 32, which says



if you miss one payment you will go into the system, will send a very clear message that people are not going to fool around, that they will know they will come into the system if they miss one payment; one payment gets missed and you will come into the system. I think that is a pretty fine line. There were others who wanted to make it three payments and so on, but we in our caucus discussions said, "No, we have to make sure that the kids do get the money and that we get it into their hands." We want a balance between those who will pay on their own and those who will not for whatever reason, whatever the number is. We will give them a chance, and if they miss one payment they will come into the system.

We hear that, "We want to keep it simple, keep everybody simple, so we'll throw everybody in the system." I will submit to you that by throwing everybody in the system we are going to clog the system and the efforts of the fine people who are here, including the director, of trying to get enforcement will be clogged because of the amount of problems that will come up, whether they be clerical errors that came up with the unemployment where the government took too much off, or all the numbers of errors that can happen. We will have people enforcing clerical errors, potentially on people who would be paying instead of going after those who would not pay.

If we want to make it tougher legislation for those who would not pay, then I think we should work in that direction: Come in with something a little bit tougher in that area. But for goodness' sake, you are going to have some people who sat here and said, "We are going to pay." And I will go back to statistics; we originally had talked about the 75% that do not pay. We were able to get the statistics from SCOE in the memo from the director dated 18 February. Really what we are going after with this legislation is the 42.5% where the enforcement undertaking is pending. If we look at the ones with some arrears owing, we heard some of the discussions where some of the arrears owing are the situations like Dofasco where 70% of the people there are in default because there is not enough money there. Then you look at some of the other ones that are transferred out. This will not help to get any more to those people. The no-filing package received from creditors with insufficient information, that will not be covered by it. So we are really talking about going after the 50% of the people. What I am saying is, let's focus more of our effort on the people that will not pay, and let's come down on them. I will not go quite as far as Mr Fletcher with some of the advertising that went too far. Let's come down tougher on those who will not pay, but for heaven's sake, we are going to clog the system for those who might want to pay.

We get back to the negotiations, I think the parliamentary assistant said, that will take place before; and I think he was very kind in calling them negotiations; through this we heard about lawyers who came in and said, "We are glad you left access out; do not conflict it with getting money for the kids." But they are the same lawyers who in the negotiations over payments use access as—and I will be very kind to them—a negotiating tool. They basically say, "You can get more access if you give us more

money." So they say, "Don't include that in the legislation, but it's okay if I want to use access as part of it."

So when the parliamentary assistant talks about the negotiations that would be taking place, they just are not going to be taking place. What you have is a situation where nobody is going to be opted out. We are basically saying that everybody is guilty and everybody is going to fall under this, that everybody is suspect. You are going to have a situation where those who want to pay are going to be clogging the system, in terms of going after people by whatever means we can use to get those people to pay, and there are some like that. This piece of legislation has not hit the public yet, but when they realize, as the odd person has done, that we are going to have intervention, I believe this is going to be probably the biggest first step that people will be coming towards this government and saying you are interfering when they would be paying normally. We talk about the—

Interjection.

**Mr Carr:** The Chair is implying that I am rambling now. As I look at this, I just see too many contradictions. We are saying on the one hand, "Let's get the money in the hands of the kids," and yet we defeat a motion that would put more money in their hands—

**Mr Fletcher:** No.

**Mr Carr:** —in motion 7, because that is what that did—

**Mr Fletcher:** No, it did not.

**Mr Carr:** —and we say we will take care of it later, we will take it in other areas, but then on the other hand we say, "No, you can't have any opting out because some of the money will not go to the children." What I think is going to happen here as a result of this legislation is—and I said this a little bit earlier—in a lot of cases, and I am not even going to suppose I understand what judges are looking at, but if they are going to err in terms of the amount, they are going to now err in giving the children less than they might normally, knowing the circumstances of what happens if in fact somebody does not pay.

So I guess as we reflect on this, I would hope the members of this committee would look at it and say, "Yes, the agreement is there that we need to get more money into the hands of the children, but this isn't going to do it by including everybody." I will conclude my remarks with that little bit.

**Mr Morrow:** Would it be possible for a five-minute recess? Five minutes, and five minutes only.

**The Chair:** Agreed. Recess until 4:45.

The committee recessed at 1640.

1647

**The Chair:** Mr Sorbara, you are indeed up next, sir.

**Mr Sorbara:** Earlier on in the day my colleague Mr Kwinter, beside me, and I were talking about the Phantom of the Opera. There is a wonderful line in the Phantom of the Opera. The phantom says, "So, it shall be war between us," and that sort of moves the thing along, you know, and then the thunder and lightning. And I say, so it shall be war between us, but the problem here is that in the phantom there was a real, good, substantial reason for the war, in a

phantom representing the night, evil, the darkness of the night, and Raoul, Vicomte de Chagny—I do not how to spell, I am sorry, I tell Hansard. I will find that out—representing white and good and heaven. I hope you all go and see it because it was a great performance. In fact, you probably know, if you have seen it, that Garth Drabinsky, who is a great Canadian entrepreneur, did a marvellous job of renovating the theatre and really mounted a tremendous production. Anyway, there was reason for the war between them; so it shall be war between us.

Unfortunately, what is happening in this committee is that a war is developing.

**Mr Mills:** Oh, no.

**Mr Sorbara:** I hear my friend the member for Durham East say, “oh, no,” and I wish a war were not developing between us. It is too early in this Parliament to have a war. I tell the members from the government party that, frankly, they are too inexperienced to wage an effective war. Yes, some of us on the opposition side are new in committee but we have been around this place for a while so—

**Mr B. Ward:** But we are the good guys.

**Mr Sorbara:** No, I am not saying it is like the US against Iraq. It is not like 10,000 sorties against two scuds per day. In fact, we do have some experience in this place and some sense of how to conduct our business. Let me give you a little history lesson in this regard.

**Mr Fletcher:** You rammed through legislation when you were in power, and you know you did.

**Mr Sorbara:** Now, Mr Chairman, my friend from—what is it?—Guelph says, “You rammed through legislation when you were in power, and you know you did.” Yes, sometimes we did.

**Mr Fletcher:** You probably—

**The Chair:** Mr Fletcher, Mr Sorbara has the floor.

**Mr Sorbara:** Now, now, just a second. He said “Sometimes.” He was right. I tell my friend from Guelph and the other members that you know precious little about SCOE, about enforcement, about support orders and the whole ball of wax here. What you are doing is taking marching orders, and you are not even taking marching orders from Howard Hampton because he probably knows less than you, believe it or not. You have been sitting on the committee listening to the witnesses; he has not even been here. The parliamentary assistant knows a little bit, but he is taking marching orders as well. I know about this because it was the bureaucracy under the Liberals that wanted this, and now they are telling you. I am telling you that all we need to do is end the war, and let’s sit down and discuss whether we cannot reshape this a little bit. You will not be embarrassed in front of the bureaucrats. In fact, you know what, they will think more of you. They will think: Wow, they are different.

**Mr Fletcher:** I do not care what they think.

**Mr Sorbara:** They are even a little bit different than the Liberals who preceded them.

**Mr Wood:** Can I get exempt from my income tax?

**The Chair:** Mr Sorbara has the floor.

**Mr Sorbara:** I do not care whether you are exempt from your income tax or not.

**Mr Wood:** For just two or three months.

**Mr Sorbara:** We are a few months into this Parliament. We are dealing with really a routine piece of legislation and on routine pieces of legislation generally there is accommodation. Even when the government wants to be rigid, unless there is a clear and compelling reason and a parliamentary assistant or a minister puts that reason on the table, there is negotiation or accommodation. We have some serious concerns with the provisions we are about to deal with. Mrs Cunningham cannot be here. I am not prepared to have this issue resolved today. I would like to work on it a little bit more so I say, let’s adjourn. Let’s let tempers cool. Well, at least, let’s adjourn at 6 o’clock. Mr Chairman, I cannot even get an agreement out of the government party to a 6 o’clock adjournment. We may be here all night, and if that is what you want to do.

**Mr Fletcher:** Whose temper? Who has a temper?

**The Chair:** Mr Sorbara, I believe the rules indicate that we have to adjourn at midnight, not all night, sir.

**Mr Sorbara:** We have to adjourn at midnight.

**The Chair:** I believe so.

**Mr Sorbara:** That is the end of the day.

**The Chair:** I can confirm that with the clerk, but I believe it is—

**Mr Sorbara:** If you want to sit here, Mr Chairman, and listen to me till midnight, because the government cannot even allow us a little bit more breathing time on this thing, I welcome you to it. I do not have appointments to keep. I do not have miles to go and I do not have appointments to keep. I can be here until hell or SCOE freezes over.

Interjection.

**Mr Sorbara:** We are asking for a little bit of time. We are asking for an opportunity to talk more to the government members, to make representations to the Attorney General perhaps, to get our own act together a little bit more. We think there is something wrong with this. We think that it is not quite perfect. Those guys over there have no idea whether it is perfect. They are just like tin soldiers marching to the slaughter for no apparent reason. Why? And why not even agree to an adjournment? What is it? Is there someone pressing you? Are your voters saying to you, “You’ve got to get this passed right away, Derek. We are counting on you for this?” Hogwash. That is not true. They do not even know what you are doing today. They think you are down here actually being productive rather than listening to me. So let’s go out and be productive. Let’s have an adjournment. We will talk about it a little bit more. We will see if there is not some sort of accommodation. We will re-examine our amendments. What do we want? Somewhat more flexibility in the bill.

**Mr Poirier:** When do we want it? Now.

**Mr Sorbara:** My friend the member for Prescott and Russell says: “When do we want it? Now?” No, not right now. We would like it—if you support our amendments;



we will have a vote right now. But apparently, you do not. But we do not support your view, as well. So in those sorts of situations generally, I say to my friend, Morrow, who says he is from the union movement, what do you do? You have a little recess. You give a little breathing time to the parties unless there is a strike deadline imminent. There is no strike deadline imminent here. We can have an adjournment. We can end this discussion now and carry it on. Maybe when we get back we will understand that Howard Hampton and his parliamentary assistant and the branch absolutely have to have this thing. They have made promises out there and they want to have it this way or no way at all, and that is it, and the government stands or falls. But I do not see that right now. There is nothing urgent.

Leave the bill and you will find out that it does not come into force when it is passed. It comes into force on a day to be proclaimed, to be set by the cabinet. That means that Howard Hampton will get a message from these folks here that they have got the machinery ready now to put this into place and so please take this order in council to the cabinet and make Bill 17 a reality. That is not going to happen until September, October, November or whenever the machinery is ready. If my experience is anything, it may not even happen until next year, 1 January 1992. Often governments do that. Let us get some testimony from our friends in the branch as to when they plan on implementing, because if they say it is absolutely impossible that we would need that much time, they are smoking something that is illegal.

Now, could I get an indication perhaps, Mr Chairman—even from Mr Morrow, who is the whip—as to whether or not they would be agreeable to a 6 o'clock adjournment tonight. I am willing to stay here until 6 o'clock. I will defer to him just for a moment to see whether they are agreeable to a 6 o'clock adjournment.

**The Chair:** Mr Fletcher.

**Mr Fletcher:** Thank you, Mr Chair. Just a little response. As far as—

**Mr Sorbara:** Well, a point of order, Mr Chairman. A point of order—

**Mr Fletcher:** I am just responding to your—

**Mr Sorbara:** I deferred to Mr Morrow to find out whether we could get a 6 o'clock adjournment.

**The Chair:** Mr Morrow, if you would like to address Mr Sorbara.

**Mr Morrow:** At this point, Mr Fletcher just exactly said what I was going to say. I do not know. I would obviously have to talk to my caucus on that matter.

**Mr Sorbara:** Mr Chairman, I would move adjournment of the committee and ask for a 20-minute bell.

**The Chair:** I do not believe that division bells are required for an adjournment.

**Mr Sorbara:** A 20-minute bell. It is called a 20-minute bell. We will have the vote in 20 minutes.

**Clerk of the Committee:** The motion is asking for 20 minutes to bring his members in for a vote.

**The Chair:** Your members are in for the vote, sir.

**Clerk of the Committee:** That is irrelevant.

**Mr Sorbara:** It does not matter; 20 minutes.

**The Chair:** Thank you, 20 minutes.

The committee recessed at 1657.

1717

**The Chair:** We call division on the motion to adjourn, Mr Sorbara's motion. All in favour of Mr Sorbara's motion? Opposed? Motion is defeated.

**Mr Morrow:** A point of order: The three whips from all three parties have talked and we do agree that this amendment is very important to the children and the wives of Ontario. Therefore, I would ask that we stand down amendments 24 through 29, and I would also suggest that we deal with amendments 30, 38, 40 and 42 and move to a 6 o'clock adjournment.

**Mr Sorbara:** Mr Chairman, just to put in my two cents' worth on that. Are you done then, Mark?

**Mr Morrow:** I was just going to say, Greg, that we also have an agreement with that. Mrs Cunningham was not there and Mr Sorbara and I discussed this. Is that fair?

**The Chair:** So you are wishing to—

**Mr Morrow:** We are wishing to deal with 30, 38, 40, and 42 and move to a 6 o'clock adjournment.

**Mr Sorbara:** Or before, if we have dealt with those amendments.

**The Chair:** What if those amendments have not been dealt with by 6 o'clock?

**Mr Morrow:** They will be dealt with by 6 o'clock.

**Mr Sorbara:** Can I just be helpful in the clarification, if I can, because this is very important to the work of the clerk. As I understand it, what is currently—

**The Chair:** Could we have a clarification from the clerk on that issue?

**Clerk of the Committee:** I have a clarification. You have asked for amendments 30, 38, 40 and 42, but for amendment 30 there is a Liberal and a PC amendment to the amendment. Are we not considering those when we consider—

**Mr Sorbara:** That is to number 30. Mark, let's not do number 30 then. It is just there is a technical matter and it is too confusing. Agreed?

**Mr Morrow:** I am agreed on that.

**Mr Sorbara:** If I understand the clerk correctly, what is before us right now is number 26, is that right?

**Mr Morrow:** We are standing that down.

**Mr Wessinger:** Twenty-four, 25 to 29 actually.

**Mr Sorbara:** No, we have only moved one. We have moved one and then we have moved an amendment to the amendment. Is that not right?

**Clerk of the Committee:** What is on the floor right now is the amendment to the amendment on page 26. That is technically what is on the floor, although we had a wide-ranging discussion and we allowed discussion on the motion.

**Mr Sorbara:** So we propose by unanimous consent to stand down the amendment to the amendment on page 26 and the amendment on pages 24 and 25.

**The Chair:** We did not have unanimous consent.

**Clerk of the Committee:** We are asking for it.

**Mr Sorbara:** I am just putting this forward. And that we then proceed directly to amendments on pages—Mark will read them out.

**Mr Morrow:** I will read them out if I can find them in here. Okay, so we are moving directly to amendments 38, 40, and 42.

**Mr Sorbara:** And we will do that by unanimous consent.

**Mr Morrow:** Yes.

**Mr Sorbara:** And we will be finished well before 6 o'clock, like in about two and a half minutes.

**Mr Morrow:** Thank you very much, Mr Sorbara.

**The Chair:** Mr Carr, go ahead.

**Mr Carr:** Unfortunately I have to ask it here because—is this with regard to 32?

**Mr Morrow:** I understand that we are coming back to that.

**The Chair:** Are we coming back to that this evening?

**Mr Sorbara:** No, we will cover all that other stuff next time we sit and consider this bill. We are just doing these few little things and then we will be back.

**The Chair:** Okay. So we are now on the government motion 38.

Mr Wessinger moves that subsection 3i(1) of the act, as set out in section 3 of the bill, as printed, except the clauses, be struck out and the following substituted:

“(1) A payor, on motion in the court that made the support deduction order, or in the appropriate court on a motion under subsection 3k(6).”

Motion agreed to.

**Mr Wessinger:** I move that subsection 3j(3) of the act as set out in section 3 of the bill as printed be struck out and the following substituted—

**Mr Sorbara:** The amendment is “by striking out.” You have changed it?

**Mr Wessinger:** We have changed it. We are changing it—maybe I should not interrupt.

**The Chair:** Perhaps, given the fact that it has not been struck out, we are talking about something which the members are only hearing verbally now. I should read it thoroughly. I do not think it is a major change, though.

**Mr Wessinger:** This is to comply with the previous change we made about the seventh day to the fifth day.

**Mr Sorbara:** Just read it as you have it there and as you want it.

**Mr Wessinger:** “(3) The request shall be deemed to have been served on the payor on the fifth day following mailing, excluding Saturdays, Sundays and holidays, unless the contrary is shown.”

Motion agreed to.

**The Chair:** Mr Wessinger moves that subsection 3k(4) of the act, as set out in section 3 of the bill, as printed, be struck out and the following substituted:

“(4) A notice given by mail shall be deemed to have been served on the payor on the fifth day following mailing, excluding Saturdays, Sundays and holidays, unless the contrary is shown.”

**Mr Elston:** I know you do not want to have too much discussion, but can I just ask, because I was not here for the discussion of the first time you did the amendment in the previous section of the bill, what is acceptable to show “contrary”? If I show up as an employer, for instance, do I just say I did not get it and that is enough?

**Mr Wessinger:** I assume that the court accepts it, normally.

**Mr Elston:** It is a pretty tough one, though, in a way. The guy has to show up and say, “You’ve served me with this notice, you say, but I never got it, and so how can you attach my bank account,” I guess is what happens, is that it?

**Mr Wessinger:** Yes.

**Mr Elston:** Is this one of those situations where the director is to be flexible again? It seems rather silly to have to have a person going into court to dispute the delivery of some mail, particularly where it is not tracked by registration. I can understand practically why costs would be prohibitive in that situation, but it is not unusual to have people not getting mail delivered in a—

**Mr Wessinger:** Yes. With a co-operative income source the director is certainly not going to—

**Mr Elston:** She is certainly supposed to be reasonable, but she is limited to being practical, right?

Motion agreed to.

**The Chair:** We stand adjourned until 10:30 tomorrow morning.

**Mr Sorbara:** What are we doing?

**The Chair:** We are doing victims of crime.

The committee adjourned at 1726.



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## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

**Chair:** White, Drummond (Durham Centre NDP)  
**Vice-Chair:** Morrow, Mark (Wentworth East NDP)  
 Carr, Gary (Oakville South PC)  
 Chiarelli, Robert (Ottawa West L)  
 Fletcher, Derek (Guelph NDP)  
 Harnick, Charles (Willowdale PC)  
 Mathysen, Irene (Middlesex NDP)  
 Mills, Gordon (Durham East NDP)  
 Poirier, Jean (Prescott and Russell L)  
 Sorbara, Gregory S. (York Centre L)  
 Wilson, Fred (Frontenac-Addington NDP)  
 Winninger, David (London South NDP)

**Substitutions:**

Cunningham, Dianne E. (London North PC) for Mr Harnick  
 Huget, Bob (Sarnia NDP) for Mr Mills  
 Kwinter, Monte (Wilson Heights L) for Mr Chiarelli  
 Ward, Brad (Brantford NDP) for Mrs Mathysen  
 Waters, Daniel (Muskoka-Georgian Bay NDP) for Mr Winninger  
 Wessenger, Paul (Simcoe Centre NDP) for Mr F. Wilson

**Also taking part:**

Elston, Murray J. (Bruce L)  
 Murdock, Sharon (Sudbury NDP)

**Clerk:** Freedman, Lisa

**Staff:**

Revell, Donald, Legislative Counsel  
 Roux, Denis, Legal Advisor, Legislative Counsel

J-11 1991



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### Standing committee on administration of justice

Victims of crime

### Comité permanent de l'administration de la justice

Victimes d'actes criminels

Chair: Drummond White  
Clerk: Lisa Freedman

Président : Drummond White  
Greffier : Lisa Freedman

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Thursday 28 February 1991

The committee met at 1035 in committee room 1.

### VICTIMS OF CRIME

Consideration of a matter designated pursuant to standing order 123 relating to victims of crime.

**The Chair:** I would like to call the meeting to order. We have today some representations with regard to standing order 123 and I am pleased to see Mr Jackson is going to be with us today. The timing today is 10:30 this morning until approximately noon hour, perhaps a little bit less, and then this afternoon from 2 o'clock until 3:30. Is there any other business before we hear from witnesses?

**Mr Sorbara:** Mr Chairman, inasmuch as this is our first section 123 hearing and inasmuch as this matter comes to us from a member of the Legislature who is not really a member of this committee but is sitting in today, I think probably it would be appropriate to have a few opening remarks from our colleague Cam Jackson, the member for Burlington South.

**The Chair:** It is certainly appropriate, but it has not been done in the other 123 hearings that I have sat in on. But Mr Jackson, if you wish to speak, certainly.

**Mr Jackson:** I do not wish to speak directly to the bill, but to the process of standing order 123 committees and what is proper and precedent. Mr Chairman, I would first of all hope to recognize that the clock is not running, because I am bringing up a matter of business for the committee and not a matter with respect to the agenda. Have you instructed the clock to begin?

**The Chair:** For the purposes of the 123 hearings, the clock does not start until the first witness is introduced.

**Mr Sorbara:** So it is still yesterday afternoon at 4:30.

**Mr Jackson:** If I may, I would like to say that it is with very deep regret that I must bring to the committee's attention a concern that I have. I will be presenting a motion in a moment requesting that you as Chair ask the Speaker of the House to investigate that the activities of this committee have been impinged on and tampered with by what we believe to be the Attorney General's office.

I wish to raise this issue for the simple reason that since prior to Christmas we have known that this committee was hoping to conduct a standing order 123 examination of victims' rights for this province. It has come to my attention that a conference on victims' rights has been scheduled to correspond with this week and that most of the deputants who were specifically requested by committee members were unable to attend this public hearing before all parties of the Legislature, in favour of private, closed-door meetings with the government.

I want to be very careful. I do not wish to suggest that this is something that the Premier or his government is doing, but rather something which the Attorney General's

office is doing. Having said that, I wish to bring to the Chair's attention that this is a serious matter, in my view, because it is one method by which the process of a standing order 123 committee review can be undermined or short-circuited by the government. To the extent that it occurs, it should be brought to the Speaker's attention, because my rights as a legislator, and quite frankly the rights of this committee, have been offended.

There has been a partial precedent for this, but it was not as serious, in my view. It occurred with this committee, the standing committee on administration of justice, last year—and I was subbed in to that committee—and it was during the alternative dispute resolution review. At that time, the Attorney General of the day called a press conference and made substantive announcements of initiatives for ADR while we were in the middle of public hearings. There was a major hue and cry made by the opposition parties, and I want to bring to the Chair's attention that the permanent members on that committee representing the New Democrats in opposition at the time were Mr Hampton, the current Attorney General, and Mr Kormos, the current Minister of Consumer and Commercial Relations. The person subbed to the committee was Mr Farnan, who is the current Minister of Correctional Services and Solicitor General. They raised a considerable stink. I do not wish to raise a considerable stink. One member of the committee walked away from the committee hearings in disgust because of this blatant attempt to short-circuit the process.

I believe what we are now witnessing—and if the Chair is not aware of it, the Attorney General has called for a press conference today while we are in session, specifically calling for a series of people to answer questions to the media. These individuals have been asked to come to this committee to present their case to us and they have indicated that they would be unwilling or unable to do so. We now know that it is because the Attorney General is having a press conference at 3:30 today to have all of them present their case on behalf of the government.

I suggest to you, Mr Chairman, that this is a very serious matter. It strikes at the issue of our parliamentary procedures. As you know, in a majority government situation, the opposition has very few rights to defend the parliamentary process. This committee, a standing order 123 committee, is one of the few options. Victims' rights in this province were approved in principle in the House and thrown to the standing committee of the House—

**The Chair:** Excuse me, Mr Jackson. You presented a document to Mr Sorbara which the rest of us do not have with us. Would it be possible for you to ensure that that document is copied and circulated?

**Mr Jackson:** Yes. Actually I will—

**Mr Sorbara:** Read it into the record.



**Mr Jackson:** I will simply read—no. Briefly, it is a news release communiqué dated 26 February 1991. It was received in my office at 4 o'clock yesterday. It is a media advisory: "Attorney General Howard Hampton and members of the Advisory Board on Victims' Issues will be available to meet with the media on Thursday, February 28th between 3:30 and 4:00 pm at the Chestnut Park Hotel, 27th floor, Axminster Room."

It goes on to suggest that the individuals who were invited to this committee—Carol Cameron, Barbara Turnbull, Mary Lou Fassel, Pat Marshall, John Bates, Judy Wolfe, and there are more—are not able to attend the committee hearings this week because they have been in this hotel behind closed doors with the minister for the last two days.

Did you know about this, Mr Chairman, would be my first question.

**The Chair:** No.

**Mr Jackson:** I do not think you did.

**The Chair:** I certainly did not.

**Mr Jackson:** I do not think any of us knew this was happening. I feel this is an offence to this committee and the process, and I want to be very careful.

**The Chair:** If we could ensure that a copy of that gets circulated. There are a couple of issues here. One, of course, is the rescheduling. I believe that the clerk can speak to the rescheduling and why that occurred. Ms Turnbull is scheduled to appear before us on 25 March, according to this tentative agenda. I do not know—it has not been brought to my attention—that she is no longer willing to attend, but certainly the clerk could clarify that. So there are a couple of issues. I believe that the rescheduling has been addressed before, and certainly the priority of Bill 17, which has been before this committee and whose clause-by-clause is still not finished, does take precedence over a 123 motion, as you know.

So there are a couple of items. One is the degree to which this committee's procedures were directly interfered with, and that is something which I think the clerk could address in terms of the scheduling issues. Perhaps we could deal with that one first. Clerk?

**Clerk of the Committee:** I am sorry; could you just repeat the question? I was not in the room, Mr Jackson. Would you like me to discuss the rescheduling of the—

**Mr Jackson:** No. The Chair is asking you to share that with the committee. I have a clear understanding of what happened.

**The Chair:** The reasoning behind the rescheduling.

**Mr Jackson:** I understand all of that, and since I am the only new member to the committee at the moment, she is restating something simply for my benefit. I am aware of the jockeying. Our problem is not that Bill 17 went late. Our problem is that we had known for several months that we were going to conduct these hearings during this week and that the ministry proceeded to call a conference involving all the known deputants whom we had said we wanted to contact and invited them away from this function to another function. That was my point. I am not

disputing that they are willing to come back at some future date. We only have 12 precious hours and the most substantive people we need to examine are holed up in a hotel room in downtown Toronto with the Attorney General. That is my point.

We should not be proceeding if in fact we are going to be talking to people who are not necessarily as appropriate to our agenda as would be the people who, the Attorney General agrees with us, should be discussed.

Mr Sorbara wants to comment. I will be quiet.

**The Chair:** I appreciate that the major part of your concern is that there has been an indirect attempt—not a direct contact with the committee or a direct attempt to subvert the committee's proceedings—to do so by the Attorney General.

**Mr Jackson:** Or his staff; whoever is responsible. I do not know who.

**The Chair:** And/or his staff. But none the less I think it behooves us to address the scheduling issue if you could, clerk.

**Clerk of the Committee:** I have just been asked to explain the scheduling, to tell you factually exactly what happened. We were originally scheduled, before December, to do the standing order 123 during the week of 25 February. When I was asked to reschedule last week, our office found it difficult to schedule for Wednesday and Thursday of this week because everybody we contacted had a prior commitment, which is the reason why we are continuing over on the 19th and 20th.

**Mr Sorbara:** I think the clerk explains quite accurately the scheduling dilemmas that we have had in respect of the 123 hearings that we had decided to undertake in, I guess it was, December. But the allegation, as I understand it, from Mr Jackson is somewhat different. The allegation is that at least the Attorney General, and perhaps the Attorney General and his ministry, in the face of potential embarrassment on the question of victims' rights hearings before this committee, proceeded to organize their own convention, their own conference, their own private hearings, so that at the very time when this committee was to hear matters which would raise concerns among members of the public about victims of crime and victims' rights, the government, in its wisdom—or I should probably say more correctly lack of wisdom—decided to pre-empt that process, at least in a public relations fashion, by organizing its own roadshow.

1050

When I see that the government is having a conference or hearings or consultations with groups and then puts out a news release saying, "We'll be available to tell you about what we've done over the past couple of days," that is clearly a roadshow. You do not have to be a minister very long to understand that is what you do when you want to have a roadshow and get a little profile. So I think Mr Jackson raises an important point.

As I understood his motion—I think it was in the form of a motion—he suggests that this matter be investigated by the Speaker to see if his rights as an MPP and this committee's privileges as a committee have been violated.

**The Chair:** Mr Morrow?

**Mr Sorbara:** I am not finished. I would like to know that as well. I think it would be crucial to know when the Ministry of the Attorney General and the Attorney General agreed or started to organize their consultation with victims of crime on the question of victims' rights. If the organization of that took place at any time after this committee resolved to have these hearings at this time, it is shocking.

I do not personally believe, by the way, that the Attorney General would be so capricious as to organize the timing of his hearings so that the very people we wanted to hear from would not be available to come. That would be even more shocking. But to organize it so that the government would have a proactive, positive message to put out just when this committee was perhaps putting out, as a result of what it heard, a negative message would be politics of the worst sort. So the question that we really have to find out, and I think is the heart and soul of Mr Jackson's motion, is for the Speaker to undertake that investigation on our behalf, investigate the Ministry of the Attorney General and report to us as urgently as possible as to what the hell is going on here.

I want to tell you, Mr Chairman, that this is the first I have heard that this conference was going on with these individuals. There is no doubt in my mind that the Ministry of the Attorney General knew two and a half minutes after we passed our 123 motion that these committee hearings would be going on. There is no doubt in my mind that they could have at any point advised you as Chairman, the clerk, their members, their whip or any member of this committee that our choice of time was inappropriate because of what they were already planning to do. But here we are. We are sitting here about to begin these hearings and for the first time I am hearing that not only are these important witnesses not available, but they are meeting in Toronto with the Attorney General. Whom is he trying to kid? What is going on?

My dilemma, as an inexperienced member of this committee, is; where do we go from here? I put it to the clerk whether or not this motion is in order and whether or not we can actually call upon the Speaker to do this investigation for us. Finally, how do we go about getting the authoritative information we need about the organization of this conference to come to some sort of conclusions about who is doing it to whom in regard to victims' rights? I am appalled.

**Mr Morrow:** I will agree with Mr Jackson and Mr Sorbara that this was brought to our attention this morning. No, we did not know about it before that. The Attorney General's ministry, from our understanding, had done its best to work around this. The evaluation of the Criminal Injuries Compensation Board does work independently of the Ministry of the Attorney General. They organized this on their own initiative. There was no intention to short-circuit the process or to subvert committee proceedings. The news release I did not know about and I do not think any of my colleagues knew about it.

**The Chair:** The clerk draws to my attention that Mr Sorbara had a question in regard to procedures. She has a response for it.

**Clerk of the Committee:** Mr Sorbara asked in terms of procedurally what this committee can do. I guess procedurally there would be a number of options. Points of privilege cannot be determined in committee. Although this is not at this point a point of privilege, this committee may adopt a report to the House and report to the House. Of course, on any majority motion the committee may request me, as the clerk, to write a letter to the Speaker. This committee also has the power to send for persons and documents. So if there is specific information that this committee would like me to get, if there is a majority vote from members of this committee, those letters would go out to the appropriate people at the direction of the committee.

**The Chair:** We have, of course a difficulty in terms of the timing we had already slated. We are almost at the end of the first half hour of the time appointed.

**Mr Jackson:** Mr Chairman, if I may briefly.

**The Chair:** I appreciate the difficulty that this kind of discussion would entail were it to be taking part of the standing order 123 time, but I wonder if it might not be possible to introduce a motion to adjourn this discussion so that we can hear from the witnesses and resume without taking away from your very important time. I am just making that as a suggestion.

**Mr Morrow:** Possibly we could stand down the vote in the best interests of hearing from the witnesses. Would we be agreeable to that?

**Mr Jackson:** Mr Chairman, I will take your guidance and I would like to dispense with the matter very quickly. I will frame my motion carefully.

**The Chair:** Mr Jackson moves that this committee request the Speaker to investigate the circumstances around the Criminal Injuries Compensation Board conference and its corresponding scheduling inappropriately against the committee's stated agenda, and specifically investigate the timing on which this conference was arranged.

**Mr Jackson:** I wish to speak briefly to the motion. I am trying very carefully not to get angry about victims' rights. I really want to put it in perspective, especially for those members of this committee who have not been on committees before, or are new to the processes. This is a parliamentary procedural issue only. The fact is that this is one of the few opportunities any MPP has to air an issue of concern.

When the NDP was concerned about food banks, we proceeded in a non-partisan fashion to deal with them, and the fact now is that this process, which is new, only a year old, may lend itself to this kind of abuse. It is a matter of our rights and should be brought to the Speaker's attention immediately. I am not finished, Mr Chairman.

**The Chair:** No, I appreciate that, but I guess I am concerned there might be some significant debate about your motion.



**Mr Jackson:** Yes, and that is why I only wish to speak to it. Normally, the Chair would recognize one speaker for each party and then we would call the vote, which is what I am suggesting. I am almost finished my remarks.

**The Chair:** Okay, thank you.

**Mr Jackson:** I was advised by a confidential phone call about a month ago, from a ministry official who indicated that there would be some effort to try and focus attention away from this committee. I have had that conversation with a member of one of the ministry staff who called me on a confidential basis.

When I heard that, I said, "It is pretty hard to interfere with the public hearing." I now see the process by which the interference occurs and I am deeply offended and the victims' rights agenda has been adversely affected by it. I do not wish to call an end to these hearings, although in the past that has been the reaction of some members. I will respect that those who were able to come did come, but this is an offence against the process and therefore I would like the motion passed.

**Mr Sorbara:** These allegations get more and more serious. If my friend Mr Jackson is right that he received an anonymous tip from the Ministry of the Attorney General that there was going to be some effort to somehow overcome the impact of these hearings, that is an incredibly serious allegation. In my view, although I am not a parliamentary expert, that is a true violation of the privileges of a member of the Legislature who brings forward a motion under a standing order for the very purpose of bringing things to the attention of the government.

My friends Mr Jackson and Mr Morrow are wrong if this news release communique from the Ministry of the Attorney General is right. This is not a conference being organized by the Criminal Injuries Compensation Board, which is separate or at some arms length from the Ministry of the Attorney General, although it reports to the Attorney General. If this news release is right, the advisory board, an advisory board to the Ministry of the Attorney General and to the Attorney General himself, will be completing a two-day conference focusing on victims' issues, not the Criminal Injuries Compensation Board. This is an advisory board to the minister himself.

So a meeting of the advisory board is called at the instance of the minister. These advisory boards are straightforward. They are there to help the minister and, through the minister, the ministry and the government formulate policy in respect of issues relating to victims' rights.

Mr Chairman, I think we should just vote on Mr Jackson's argument because it is such a serious matter.

**Mr Morrow:** I would ask that in the best interests of the witnesses here, I would like Mr Jackson's motion to stand down at this moment.

**Mr Sorbara:** No. Absolutely not.

**The Chair:** That requires unanimous consent and I have already addressed that issue.

**Mr Sorbara:** This is serious. This should not be going on.

**The Chair:** Excuse me, Mr Sorbara. I believe that the clerk has already spoken with the witnesses who are before us. I have expressed my concern about that and they have agreed to attend the beginning of the 123 hearings.

With all due apologies to the witnesses, we are going for—

**Mr Jackson:** Mr Chair, in the interests of time I would like to call the question.

**Mr Morrow:** Mr Chair, can I have the—

**Mr Jackson:** A call for the question has been expressed.

**The Chair:** Mr Morrow requests a 20-minute division bell.

**Mr Jackson:** I thought he was interested in hearing from the deputants and we would proceed. You are not?

**The Chair:** Twenty minutes.

The committee recessed at 1103.

1121

**The Chair:** You do require unanimous consent, as we have a vote in front of us.

**Mr Morrow:** With the indulgence of all three parties, I would like to make a statement before the vote.

**Mr Sorbara:** Is it brief?

**Mr Morrow:** Very brief.

**The Chair:** We have the indulgence, Mr Morrow.

**Mr Morrow:** In my opinion, yes, I do agree there has been a parallel problem that obviously should and will be looked into. I have asked before the divisional vote that this be stood down so that we could do that and have enough time to look into it. Just for that reason, I believe the government needs more time than 20 minutes. Thank you very much.

**The Chair:** Is there unanimous consent to stand down the vote until—

**Mr Jackson:** No, but I will call 20 minutes in order to give Mr Morrow 20 minutes. I am allowed to call my 20 minutes.

**Mr Morrow:** Thank you very much.

**The Chair:** Let me consult with the clerk.

**Mr Sorbara:** I do not think we can just pile 20 minutes on 20 minutes.

**The Chair:** I believe that there has to be intervening business.

**Mr Jackson:** All right. Let us ask the clerk to come to that conclusion.

**Mr Sorbara:** Might I just suggest, to help us out here, if you guys are not prepared to vote in favour of this, vote against it and you will have another very similar motion before the committee as soon as we finish that vote, and if you need more time, then I am sure that—

**Mr Morrow:** Mr Chair, just one second, please. With the indulgence of everybody again, I have just had some other information brought to mind. It is our understanding that, yes, there has been a problem. We have asked for it to be stood down, but I will be standing, and I hope my

colleagues will be standing, in support of Mr Jackson's motion.

**Mr Jackson:** Can we have the motion read again?

**The Chair:** I am sorry. Your request then is again, sir?

**Mr Sorbara:** He is just letting us know how they are going to vote and they are going to vote as soon as we hear the clerk read the motion.

**Clerk of the Committee:** Mr Jackson moves that the committee requests the Speaker to investigate circumstances around the Criminal Injuries Compensation Board conference and its corresponding scheduling inappropriately against the committee's stated agenda, and specifically investigate the timing around which this conference was arranged.

**Mr Jackson:** Mr Chairman, just a point of clarification.

**The Chair:** We have a question.

**Mr Jackson:** I realize that, but I have to clarify the motion, even for the mover.

I put in the criminal compensation point based on Mr Morrow's sharing with the committee that that is who is conducting the conference. Now, if that is his understanding, fine.

**Mr Poirier:** Subject to confirmation.

**Mr Jackson:** Since that is part of the Attorney General's office, I would rather the motion read, "the Attorney General's office and their specific," if we wish. But I would rather it be, "the Attorney General's office convening meetings."

**Mr Morrow:** Excuse me, Mr Jackson. It definitely is the Criminal Injuries Compensation Board.

**Mr Jackson:** Except that the press release I read into the record says the Advisory Board on Victims' Issues, and its membership is listed as the people who were supposed to be here, but they are at that conference. It includes members of the Criminal Injuries Compensation Board. It is under the bailiwick of the Attorney General's office, so I want the motion to read, "the Attorney General's conference, convened by the Attorney General," etc.

**Mr Poirier:** I think that would be more proper.

**The Chair:** I have a problem. We have a question put and we seem to be amending the question and discussing it.

**Mr Jackson:** No, I wanted the motion clarified and my intention was to suggest "the Attorney General."

**The Chair:** Is there unanimous consent to do so? Mr Poirier indicates from his caucus.

Interjections.

**The Chair:** Is there unanimous consent to change the motion? Yes? I have not heard from the government caucus.

**Mr Mills:** Can we speak to this?

**The Chair:** Not until there is unanimous consent to amend the motion.

**Mr F. Wilson:** I do have one question.

**The Chair:** No. Before we discuss that we have to have unanimous consent to do so.

**Mr Morrow:** No, there is not.

**The Chair:** There is not unanimous consent.

**Mr Sorbara:** Why do we not vote on this amendment?

**The Chair:** All in favour of Mr Jackson's motion.

**Clerk of the Committee:** A recorded vote has been requested.

The committee divided on Mr Jackson's motion, which was agreed to on the following vote:

### Ayes-8

Carr, Jackson, Morrow, Poirier, Sorbara, Waters, Wilson, F., Winninger.

### Nays-1

Mills.

**The Chair:** At this point, should we discuss the issue further, an amendment to that motion, sir?

**Mr Sorbara:** Mr Chair, on a point of order: I would like to do a couple of things. I would like to move a motion collateral to the motion we have just passed, and give my friend Mr Jackson an opportunity as well. Having looked at the actual words of the motion that we have just passed, I move some amending words, if that is appropriate and permissible by the clerk. I can find that out, but my motion—

**The Chair:** The clerk suggests that you would be happy if we passed a new motion rather than amending a motion which has just passed because, I believe, procedurally that is out of order.

**Mr Sorbara:** Okay. I would move a motion relating to privilege at the moment, and I think perhaps Mr Jackson may want to move a motion as well, a new motion which will have the effect of clarifying. My motion is quite simple: that the motion we have just considered concerning the convening of a conference dealing with victims' rights be considered by the Speaker as a breach of the privileges of the members of this committee.

**The Chair:** The clerk asks to clarify.

**Clerk of the Committee:** I would just like to clarify for the committee that if somebody is bringing to the committee's attention a breach of privilege, this committee cannot deal with a breach of privilege, but we can report the breach of privilege to the House and let the House deal with the breach of privilege. So that is, if my understanding is correct, what Mr Sorbara is asking, that we report to the House a breach of the committee's privilege.

**Mr Sorbara:** Yes. I will then rephrase or try and clarify my motion simply by saying that, in respect of the matters brought to the committee's attention today by Mr Jackson, this committee report to the House matters that it considers to be a breach of the privileges of the members of this committee and asks the House to consider that matter in that context.

**Mr Jackson:** A friendly suggestion: to expand that motion to include, in terms of our activities, by linking it to standing order 123, an examination of victims' rights. I want it to be clear and it would be helpful that the breach is a function of the issue that we are investigating, not that



this committee and its conduct generally has been breached over a variety of issues. The incident is specific to our work in this area and it might be helpful to—

1130

**Mr Morrow:** Mr Chair.

**The Chair:** Mr Morrow, we have a motion.

**Mr Morrow:** Can I have the motion read back to us?

**The Chair:** Mr Sorbara, would you repeat the motion to clarify it?

**Mr Sorbara:** I will just have the assistance of the clerk of the committee because this should be very specific and it will be helpful. I move that this committee report to the House the breach of the privileges of the committee and its members inasmuch as the Attorney General has apparently scheduled a two-day conference on the issue of victims' rights and has done so to coincide with the deliberations of this committee under standing order 123 on the very same issue, and in doing so has denied or attempted to deny this committee the opportunity to hear from witnesses competent to testify on matters relating to victims' rights. Does that help you out, Cam?

**Mr Jackson:** That is perfect.

**Mr Sorbara:** Can I just speak to the motion now?

**The Chair:** Certainly, and then Mr Morrow and Mr Mills.

**Mr Sorbara:** I hope that my friends in the government party can continue to accept what we are doing here. This, again, will not bring the government down but simply puts the latter motion in the context in which it really should be, within the context of a consideration of our privileges as committee members. I think Mr Jackson's motion is appropriate. Reporting to the Speaker allows the Speaker to do the investigation and then putting it within the context of privilege gives the Speaker an opportunity to report to the House within a specific set of guidelines dealing with privilege.

I want to be quite frank with you. This looks like something that might come close to a breach of privilege, although in my five and a half years in Parliament we have not seen too many instances. I cannot recall one where the Speaker has actually said, "Yes, the members' privileges have been violated." I am not trying to put one over on you; I am just trying to expand what we did last time and make sure that we do this thing in a way that has the question thoroughly examined by the time we get back to the House. So I hope that my colleagues will continue to do what they did last time and support the motion.

**Mr Morrow:** I would just like to reiterate for everybody on this and state that the board organized this conference and not the Attorney General. They are two separate entities.

**Mr Mills:** Like my colleague Mr Morrow, I would like to also point out that this board is acting on its own and it may be coincidental; it may look rather odd that both of these things come together. I still am of the opinion that the board acted independently and it is perhaps unfortunate or regrettable that these two things have come together. The thing that bothers me about this that has not

been addressed and that has some tremendous effect on my support and the way I would vote is this mystery person at the AG's office who let Cam know that this was going to happen. I am afraid that I cannot act on an allegation that says, "Well, this is what happened."

**Mr Jackson:** Who told you that it was an independent? Who told you they operated independently?

**The Chair:** Mr Jackson, Mr Sorbara and then Mr Poirier follow Mr Mills.

**Mr Mills:** I cannot support it on the grounds of this allegation, which to me has not been substantiated. I would like to see it investigated further and if in fact—

**Mr Jackson:** Get your glasses changed.

**Mr Mills:** I read that. I am not talking about the press release; I am talking about the board. I am always very leery of these mystery people and these brown envelopes that deliver all this kind of information. So I am not going to support it, based upon that.

**The Chair:** Before Mr Sorbara speaks, I would like to draw the committee's attention to the difficulty that Hansard has when there are many conversations, all of which are important. I want to ensure that committee members here should be recorded. However, it is impossible for Hansard to record them when they appear extemporaneously and without being recognized by the Chair. Mr Sorbara?

**Mr Sorbara:** I just wanted to say to Mr Mills, and particularly to Mr Morrow, that nothing would please me more, to tell you the truth, than to find out after the investigations have been done that some time back in October the Criminal Injuries Compensation Board organized a two-day conference to examine the question of victims' rights thoroughly. I am sure it has conferences on a regular basis and that this was a terribly unfortunate coincidence. I really would prefer that to be the result and I want to tell you that if that is the result, I would not be one bit surprised, because these things do happen.

But unfortunately, the evidence before us, and in particular two pieces of evidence, the testimony of our colleague on this committee, Mr Jackson, to the effect that there was going to be some interference, or some competition, to be more accurate, with this committee's standing order 123 deliberations, and the fact that a news release issued a couple of days ago comes out of the Ministry of the Attorney General, not the Criminal Injuries Compensation Board and does not refer to a two-day conference of the Criminal Injuries Compensation Board but a two-day conference of the advisory board on victims' rights.

It may well be that someone picked up the wrong stationery. Those kinds of things do happen around here unfortunately. And it may be that the call that Mr Jackson got was just a call from some angry bureaucrat who was trying simply to get the the Criminal Injuries Compensation Board conference moved to a different day because it interfered with his or her schedule and he thought he could just stir up a little trouble by creating a little bit of political heat for his or her ministry. These things do happen around here; they happen far too often. But I think it would be a healthy thing for our committee to get to the bottom of this

and to have the necessary information so that the record could be clear.

If, having passed the motion—

**Mr Morrow:** We have passed the motion.

**Mr Sorbara:** We did pass that motion, but if we passed the next motion, that would give the Speaker additional authority to do the necessary investigations. My expectation is that when we reconvene in the House, or a couple of days thereafter, the Speaker is going to stand up and report to the House on this breach of privilege if we pass this second motion. He will say, in short, to the House it was a regrettable error. There was no attempt to pervert or compete with the work of the committee on the administration of justice and, having done a thorough investigation, he is satisfied that the privileges of the members of this committee have not been breached. But I encourage you, having taken the first step, to make sure that the opportunity is complete and allow us to frame this thing within the context of privilege so that we can really get to the bottom of it and get a response as soon as possible.

**The Chair:** Mr Poirier, then Mr Wilson, then Mr Carr.

**Mr Poirier:** I just wanted to address myself, especially for the benefit of the newer members on the committee here, and I say this with all respect—

**Mr Sorbara:** And our respect is increasing.

**Mr Poirier:** Gord and friends: 26 February. And the advisory board is always advisory to the minister. If this is dated 26 February, from my knowledge and experience, having been a parliamentary assistant a number of times, this has been prepared for some time back, to issue this. An advisory board to the minister would not have a conference without the minister knowing. I would find that very hard to believe. It is not as independent as you described it, with all due respect, Gord.

If it was the other board, well, fair enough, maybe it did. But this is an advisory board to the minister. The fact is, I want to invite the newer members on the committee to consider that we are asking the Speaker to look into this. We are not condemning anybody. We are asking the Speaker to look into this. On this letterhead and this date; this advisory board to the minister at the same time as us. With some of the evidence that Mr Jackson has brought forward, I would invite the newer members to join us, to ask the Speaker in a non-partisan way to look into this, because you may require that type of resolution in the future and you will understand why it is important, when there is a question that members' privileges may—and I underline the word "may"—have been allowed. It is important for all members of the House to have the Speaker look into it and to determine the nature of the objection.

1140

**Mr F. Wilson:** This paper I have in front of me here says "News Release, Ministry of the Attorney General" dated, etc as my colleague has said. This is not an official document. This is not a legal official document and it never was intended to be. It is a PR document. These are, as you said Mr Sorbara, fraught with problems, with mistakes, with all kinds of things. They are never meant to be

a basis for decision-making. There are enough lawyers in this room, I think, with a combined IQ exceeding 102 to know that you would never get anywhere in front of a court of law.

**Mr Sorbara:** Not an average IQ, a combined total.

**Mr F. Wilson:** Therefore, to make an amendment or a change to a motion based on this document—you just cannot do it. This is as good as a newspaper, which you would not also make your decision based on, simply that.

**Mr Carr:** The only point that I wanted to make on this is that we have a situation where the Attorney General was aware of a situation and obviously did not bring it to the attention of any of the members. I find that very—maybe communication is bad, but unfortunately it looks very bad for this committee and I would encourage everyone to vote in favour of the motion.

**Mr Winninger:** I had no objection, of course, to Mr Jackson's motion, simply because he was asking the Speaker to exercise his discretion and rule on the appropriateness of the objection as to procedure.

I do, however, object to Mr Sorbara's motion, simply because Mr Sorbara's motion imputes some kind of motives to the Attorney General, who might deliberately be infringing on the rights of the members of this committee. That is why I find Mr Sorbara's motion objectionable and I cannot vote for it.

**Mr Morrow:** I too voted in favour of Mr Jackson's motion because it implies the Speaker is to make an investigation. This motion requesting an investigation says that the AG has done things improperly. It is based on innuendo and unsubstantiated rumour.

**Mr Sorbara:** Will it be too strong to say I am appalled at the nonsense I am hearing from the government members? It is outrageous that you say that. No one is imputing motives. We are asking that an investigation be done. If the investigation finds that the Attorney General had nothing to do with this, that is what the Speaker will say.

**Mr Morrow:** We already have an investigation.

**Mr Sorbara:** But we have had a little bit of evidence. How else do you want to do it? Do you want to say, "Mr Attorney General, if there is anything wrong, let us know?" Give me a break. Come on.

Your members for years and years raised these matters and put forward these motions as a matter of privilege, and if you will not do it here, by God, you are going to see it in the House day after day after day. What are you afraid of? This is not imputing anything to the Attorney General. No one suggested that this is a legal document. This is a news release advising the public that something is going to happen. That is all.

What we are saying through this motion is we want an investigation. We feel maybe, perhaps—although we would doubt it, with pristine Howard Hampton now in office—that they would ever do anything to compromise the rights and privileges of the members. But we have this little bit of evidence that creates a shadow of a doubt about the purity of the new government, so we want the Speaker



to investigate under the category of privileges in the standing orders.

Come on, do not be afraid, gentlemen. Do not be afraid. You do not need to hide behind your majority. Howard Hampton did not do anything wrong. He was not trying to screw up the proceedings of this committee, he was just having a news conference and that is going to be the result. But, for God's sake, do not pervert the very investigation. Do you remember Richard Nixon? "There's no problem here." Watergate. "There's no problem at all. We're not covering up anything. We don't need to do any investigation. Hey, by the way, erase those tapes." They threw him out of office.

So what are you hiding? We are asking for an investigation to be done. The Speaker of this House, over the past 128 years in this House, has done hundreds and hundreds of investigations on the question of privilege, and in 99 cases out of 100 he stands up and says, "There has been no violation of the privileges of the members."

**Mr Poirier:** I never heard one in seven years.

**Mr Sorbara:** My friend Mr Poirier says he has not heard one in seven years. So what are you hiding behind? Allow the motion to go through. Do not start covering up now. You have four and a half years before you get thrown out. What are you doing? What are you hiding? My God. We want this motion on privilege to carry, because we think—

**The Chair:** Mr Wilson, do you have a point of order?

**Mr F. Wilson:** This insinuation that somehow we are covering up, that is—

**The Chair:** That is not a point of order.

**Mr Sorbara:** It is not a point of order. Thank you, Mr Chair.

I am not insinuating that you are covering up. I am saying that once you vote against this privilege motion, you are participating in a process that prevents us from doing the kind of investigation that needs to be done, and that, in my mind, comes within the category of coverup. Do not start now. It is too early. There will be things that are far more important to cover up as you make more mistakes during your one term in office. So I am recommending to you that you change your mind, support this motion. Let the Speaker do his work and simply bask in the glory when the Speaker stands up and reports to the House and says, "There has been no violation of the privileges of the members."

**The Chair:** Before Mr Jackson speaks, if the other members, several of whom have spoken without being recognized, wish to be recognized, all they have to do is elevate their hands and grab my attention. Mr Winninger has done that already. Mr Jackson is first, though.

**Mr Jackson:** Several members of the government caucus have spoken to this issue, but unfortunately were not present—I am not naming them—when the substantive elements of the debate on this issue were made known. Therefore I feel it is important, almost imperative, that these matters be put on the record in their presence, because they correspond to their voting.

Several statements have been made about whether or not a bona fide case has been made for a breach of members' privileges, and I must say that that is solely the decision of the Speaker. That is why we have the Speaker and it is why we voted for the Speaker. It is because he is there to protect us in a non-partisan way.

But I wish to suggest to the committee that standing order 123 committees are unique. They are a very rare opportunity for backbench MPPs to bring forward an issue of vital concern to them or to their constituents. Therefore, it stands alone as one of the few opportunities that cannot be short-circuited or impeded. In private members' time this can be done. You can pass the vote, everybody looks good and then you throw it off to committee of the whole House and it dies a death.

Members would be aware that on two occasions I have brought forward a victims' bill of rights. The Liberals said they would support it, as did Howard Hampton, as he stood up in the House, but the government, controlling the agenda on the floor of the Legislature, put it to committee of the whole House. It died a natural death. This is the only opportunity for this issue to come forward.

So matters of privilege are rather unique when put in the context of any form of tampering that may have occurred with this committee. I have been very careful, and Hansard will confirm it. On Mr Mills's suggestion of allegations, I have been very careful to talk about the appearance of things that should be looked into. A bona fide charge has not been made.

The fact of the matter is that we are here by all-party agreement to examine the fact that Ontario is the only province in Canada that does not have a victims' bill of rights. If we listen to the citizens of this province, they tell us we need one. That is what we are here for. That is the only reason we are here. We, in a non-partisan fashion, will come together and we will give a report and we will advise the government of the day in a non-partisan fashion on what we think are in the best interests of victims of violent crimes in this province.

1150

We have available to us the best witnesses on this subject who could come and speak to us, and we knew that last December when we chose the week of our deliberations and the people to invite. The clerk has reported she has experienced considerable difficulties with the scheduling and rescheduling of this committee's agenda, but it should be put on the record that there are several people whom we have requested as deputants who have not returned the calls and who, as we speak, are now in a hotel room in downtown Toronto.

My staff went to the hotel yesterday to have a look-see, as it were, the minute we got this press release. My staff walked into a room with almost 60 of the victims' rights activists, and all the best advice that this committee had asked for was assembled in that room. But more important, five ministries of your government were represented in that meeting and yet we have the Ministry of Correctional Services before us today. I am not going to slight the Ministry of Correctional Services; it is a great ministry.

**Mr Poirier:** Hear, hear.

**Mr Jackson:** But this is the first time that the minister himself has not attended a standing order 123 committee and spoken on behalf of the government to a committee. Nowhere do I see Mr Hampton, nor do I see his parliamentary assistant making a statement. It should be on the record and shared with other members that this is unique. In the six times that these committees have operated, this is the first time the government has chosen not to put on the record anything of importance to share with this committee.

**Mr Fletcher:** It is not on the agenda.

**Mr Jackson:** It is not on the agenda because the government chose not to be on the agenda. Thank you, Mr Fletcher.

I wanted to correct the record on these points because my concern is primarily that this committee cannot do justice to the job it has at hand. If that is the case, why are we sitting here, spending, I am told, somewhere between \$8,000 and \$10,000 of taxpayers' money, listening to those deputants we might have access to as opposed to the deputants this committee first wanted to speak to?

We might get hold of them two weeks from now or when the House is sitting but, quite frankly, with 12 limited hours, the system was designed and devised in order for the committee to come together in a non-partisan fashion. We have the right to request witnesses to come forward, and our right to request those witnesses to come forward when it was deemed appropriate has been impeded by what is evidenced by the press release. It is not hearsay. If you want to go down to the hotel and go to the 27th floor, you will walk in on a room with 50 or 60 people being convened by the Attorney General's office. I know most of these people in the room, and so do my staff, and we were able to recognize them.

I consider that a serious matter, and I am not here to throw books and to run out of the meeting as other opposition parties have done in the past when these things have come to light. I think it is a serious matter—

**Mr Sorbara:** Unnamed parties.

**Mr Jackson:** —unnamed political parties—when this has happened, the reason being that the democracy we have is very fragile. We will be one day in government and another day in opposition; and no one knows that better than the NDP, which when I first arrived was the third party.

So we are calling upon this motion to do what is contained in the other motion, but more appropriately worded in accordance with our House rules, and that is, we must report to the House in order to engage the Speaker. I did not come to this meeting with my motion all designed and plotted out. I came to this meeting to share with the committee my concern, to see if people shared that concern. I was pleased that Mr Morrow, Mr Mills and the Chairman confirmed for the record that they were totally unaware that this parallel activity was going on, and I put it in context that the implications are not so much that someone designed to do it but that we

cannot proceed and do the best job we are capable of, based on the evidence that is before us.

I am prepared to proceed even though we are wasting our time. More important, we can move from this motion and proceed. But if we cannot agree that there has at least been a matter that should be examined and we should report this to the House, then there really is no need for us to proceed, because the people whom we should be talking to are down at a hotel, downtown Toronto, at the Chestnut Park Hotel, meeting with four or five different ministries of the current government.

I will serve notice: My next motion will probably be that we adjourn and go down and sit in on that. We will get more value for taxpayers' dollars and we will learn more as a committee if we just sit in the back of the room and listen to the discussion. We will. But we will be doing more justice to this issue than sitting here listening to one group talk to us when there is another group, a much better group quite frankly, assembled downtown speaking to the five ministries. And that is what should have been occurring here.

How it happened: We will get to that conclusion at some point. Who is responsible? We will get to that conclusion as well. But let's not lose sight of: Do we want to do a credible job? Because if we do, we cannot proceed with this arrangement that we have now. I for one believe I will get more information and be more helpful to the parliamentary process if I am in that hotel room where all the action is on this issue in this province. It certainly is not occurring at this table, and that is where the breach of our rights is.

I would have been happy if the minister had phoned this committee up through its Chairman and said: "I would like to invite the members of this committee to sit in on a portion of the conference." If the minister is not prepared to come and speak to this all-party committee, he should invite us to the luncheon where he is speaking to them and let us listen to his words on his government's commitment and his concern in this area. But to shut out three political parties from the process when we have clearly made known our interest in dealing with this issue in a non-partisan fashion, in my view, if it is a bad oversight, it is most probably a breach of our rights.

So I will leave it on that note. The Speaker is going to investigate this anyway. By reporting to the House we are only formalizing what we have already approved in the first motion, and if no one has explained that to you, I hope I have.

**Mr Mills:** Yes, we understand.

**Mr Jackson:** Let's please proceed with this and then we can get on with our agenda.

**Mr Winner:** Mr Chair, I would forgo my earlier remarks and simply say that Mr Sorbara has had ample opportunity to respond to my objections to his motion. I for one found Mr Jackson's resolution to be in acceptable form and I would urge the committee to call the question. The issues have been defined, and I think we should move on.



The committee divided on Mr Winninger's motion, which was agreed to on the following vote:

**Ayes—6**

Fletcher, Mills, Morrow, Waters, Wilson, F., Winninger.

**Nays—4**

Carr, Jackson, Poirier, Sorbara.

The committee divided on Mr Sorbara's motion, which was negated on the following vote:

**Ayes—4**

Carr, Jackson, Poirier, Sorbara.

**Nays—6**

Fletcher, Mills, Morrow, Waters, Wilson, F., Winninger.

1200

**Mr Sorbara:** On a point of order, Mr Chairman: Before I propose that we adjourn for the noon hour and reconvene at 2 o'clock, I want to personally express my apologies to the witnesses who were to have testified before us this morning. They have taken time out from their responsibilities to come before us. They are not subpoenaed; they are here voluntarily.

I do want to say as well, though, on the same point, that there will be other motions brought forward to this committee by myself or perhaps Mr Jackson so that we can pass some sort of motion that allows us to get beyond the coverup and into what really happened. Those motions, I am telling my friend Mr Morrow, will deal with gathering information or some way or other to find out what happened here. So I just want to, in a sense, put those who are coming to testify to us this afternoon on some notice of what they are in for.

**The Chair:** You have gone beyond the point of order.

**Mr Sorbara:** And now I move adjournment until 2 o'clock.

**The Chair:** Before adjournment I would, with the committee's indulgence, like to apologize to the witnesses for the delay and the inconvenience that they have suffered this morning. I believe that the clerk has spoken with you and you are willing or able to attend at a later point. Thank you very much for coming this morning.

Can we go back to Mr Sorbara's—

**Mr Jackson:** On a point of order, Mr Chairman: I served notice in my summary comments that I would be tabling a motion. I move that this committee adjourn and reconvene as part of the Attorney General's conference so that we can benefit from the expertise of those witnesses who are presenting themselves to discuss our agenda item.

**The Chair:** We have a problem. We have a motion to adjourn.

**Mr Jackson:** No, I was careful to say I served notice of my intention to have a motion, which preceded your recognizing Mr Sorbara. I am now addressing the Chair that I have served notice to you of my intention to serve a motion. I do not wish to imply that knowing that, you

specifically recognized Mr Sorbara. I would recognize that more as an oversight.

Your ruling then is that my motion would be in order.

**Mr Morrow:** No.

**Mr Jackson:** Then it is not an oversight.

**The Chair:** Mr Sorbara, in order to discuss Mr Jackson's motion which he wishes to table to some point, would you be willing to withdraw your motion to adjourn?

**Mr Sorbara:** Sure, briefly. If he is brief, yes.

**Mr Jackson:** I do not need to speak to the motion; I have spoken to the motion.

**The Chair:** Would you give us an idea as to when you would wish to bring up this motion?

**Mr Jackson:** Right now. We are voting on it now, that we would adjourn this portion of our hearings and that we would attend the conference for the balance of the afternoon so that we can benefit from the contribution of the Advisory Board on Victims' Issues and be present for the Attorney General's press conference at 3:30.

**The Chair:** So in consequence, if your motion passed, then the clerk would either reschedule or cancel the interviews this afternoon.

**Mr Jackson:** That is correct.

**Mr Morrow:** Obviously, Mr Jackson, if you feel that you have to go down there, that is your own belief. I would like to sit here and listen to the witnesses who have had to stay through this morning and obviously the witnesses who are coming this afternoon. I think, with their indulgence, that we should do that.

**Mr Waters:** Further to what Mr Morrow has said, we have invited several witnesses to appear before the committee. The witnesses who are at the conference are on the schedule to appear before this committee and I think that we owe it to the witnesses who we have invited for today to be here with them. I have some concern about inviting people and then just saying: "Well, guess what? We're rescheduling you for another day, because we want to go down and visit—"

**Mr Sorbara:** I would raise it as a question.

**Mr Jackson:** Recorded vote.

**The Chair:** I am sorry, the question was put in by whom? Mr Jackson put a question.

**Mr Jackson:** No, I did not. I just simply said, when we come to vote, I wanted a recorded vote, that is all.

**The Chair:** We are still discussing the motion then.

**Mr Fletcher:** I would like to call for a 20-minute division.

**Mr Sorbara:** Oh, come on. Please, Derek, don't do that.

**The Chair:** I am sorry, it is not debatable. Unfortunately, as it may run into our lunch hour, it is still not debatable.

The committee recessed at 1206.

1226

**The Chair:** I would like to call the committee to order. After conference with the clerk I understand that the

period of time that a recess can be requested is up to 20 minutes, so it need not be a full 20 minutes, for your information. Mr Jackson?

**Mr Jackson:** I just want to ask if the clerk recognizes a quorum.

**The Chair:** There is no quorum. There will be 10 minutes to see if we can achieve a quorum. We are recessed for 10 minutes.

The committee recessed at 1227.

1235

**The Chair:** It being 1235 and as we have waited for 10 minutes, I do not see a quorum. We are therefore adjourned until 18 March after routine proceedings in the House.

The committee adjourned at 1236.



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**Chair:** White, Drummond (Durham Centre NDP)  
**Vice-Chair:** Morrow, Mark (Wentworth East NDP)

Carr, Gary (Oakville South PC)  
Chiarelli, Robert (Ottawa West L)  
Fletcher, Derek (Guelph NDP)  
Harnick, Charles (Willowdale PC)  
Mathysen, Irene (Middlesex NDP)  
Mills, Gordon (Durham East NDP)  
Poirier, Jean (Prescott and Russell L)  
Sorbara, Gregory S. (York Centre L)  
Wilson, Fred (Frontenac-Addington NDP)  
Winninger, David (London South NDP)

**Substitutions:**

Jackson, Cameron (Burlington South PC) for Mr Harnick  
Waters, Daniel (Muskoka-Georgian Bay NDP) for Mrs Mathysen  
Wiseman, Jim (Durham West NDP) for Mr Fletcher

**Clerk:** Freedman, Lisa

**Staff:**

Swift, Susan, Research Officer, Legislative Research Service









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## Legislative Assembly of Ontario

First Session, 35th Parliament

## Official Report of Debates (Hansard)

Tuesday 19 March 1991

### Standing committee on administration of justice

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Statute Law Amendment Act, 1990

## Assemblée législative de l'Ontario

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Président : Drummond White  
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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday 19 March 1991

The committee met at 1541 in room 228.

### CHILD AND FAMILY SUPPORT STATUTE LAW AMENDMENT ACT, 1990

### LOI DE 1990 MODIFIANT LES LOIS RELATIVES AUX OBLIGATIONS ALIMENTAIRES

Resuming consideration of Bill 17, An Act to amend the Law related to the Enforcement of Support and Custody Orders.

Reprise de l'étude du projet de loi 17, Loi portant modification des lois relatives à l'exécution d'ordonnances alimentaires et de garde d'enfants.

**The Vice-Chair:** I would like to call this committee to order.

Mr Carr moves that the committee continue consideration of Bill 17 today, on Tuesday 19 March, and that the subcommittee meet to discuss the future scheduling.

Any discussion on Mr Carr's motion? Seeing none, all in favour? Opposed? Carried.

Motion agreed to.

**The Vice-Chair:** I would like to now move on to Bill 17 amendments, amendment 26.

**Mr Wessenger:** Seeing that it has been a long time since we have dealt with these matters, I would ask that we could consider standing down 26 and going back to the beginning at the ones we—

**Mr Sorbara:** Do you want to start amending them all over again?

**Mr Wessenger:** Yes, I thought we would go back to try to get ourselves back in sequence, go back to all of the items that stood down in sequence, if that would be agreeable to members of the committee. So we would go back to amendment 5 if that would be satisfactory.

**The Vice-Chair:** With the committee's indulgence, I understand that we do need unanimous consent to move back to amendment 5 that was stood down.

**Mr Sorbara:** Mr Chairman, perhaps the parliamentary assistant to the Attorney General could just help me out and help out the other members of the committee. We were in the midst of a discussion of a motion that I moved when we were last considering this bill. I have had given to me by the clerk of this committee a number of new amendments that the government is, I suppose, anticipating moving.

It may well be that the parliamentary assistant to the Attorney General wants to tell us how he proposes to proceed over the next several days of consideration of this bill rather than just suggest that we go back to the beginning. How does he propose to proceed with the new amendments? I will call them the yellow amendments because they are put on yellow paper. It is not a qualitative description of the amendments; I have not even read them yet, they are just on yellow paper. Does he propose to integrate

these into the consideration of the bill? Does he propose to just quickly go through those amendments that were stood down and then go back to amendment 26, which was my amendment? Maybe the parliamentary assistant to the Attorney General could give us a weather forecast as to what we might anticipate as we proceed slowly, methodically, carefully and judiciously through this important but flawed piece of legislation.

**Mr Wessenger:** Yes. What I was proposing is that we move back to the stood-down items and go through the bill again in sequence with respect to the items that were stood down, up until we have attained back to the item that was under discussion, number 26, and then we just continue along. Any new amendment subsequent to that would be considered in sequence as we go on. I just thought it would be easier for members of the committee if we kept in sequence in dealing with these matters and the bill, rather than continuing on and then going back again.

**Mr Sorbara:** I do not have a problem with that. Generally we stand down amendments because they give rise to some controversy or other. It has been a while since we considered those amendments. I will have to have my memory refreshed as we get back to them as to why we stood them down and what the subject of the controversy was. But is the parliamentary assistant suggesting that in any, or some, or all cases, the controversy has now been resolved and the government is prepared to bend slightly in order to accommodate the—

**Mr Wessenger:** I guess you will have to look at the amendments to consider whether they have been resolved. The matter I intend to deal with in the first instance is the matter of temporary interruptions, which was raised by your colleague Mr Elston. We think we have an answer to that problem that was raised by him. If we go back, that was the first one that was stood down.

**Mr Sorbara:** Let us just say that I am amenable to proceeding in that way. There is a great deal of discussion that needs to take place concerning the amendment we were on when we left. This is a very significant part of the bill because it deals with whether and to what extent people can free themselves from the clutches of the government in resolving these matters privately. Unless there are any objections from any of the other committee members, I am prepared to follow that course, with one caveat: Before we get there I would like at least a brief description as to why we have additional amendments and, generally, what these additional amendments do to the bill.

**Mr Wessenger:** I certainly would be prepared to give that explanation, Mr Sorbara.

**The Vice-Chair:** So is there unanimous consent? Thank you very much.



Section/article 1:

**Mr Wessenger:** This is originally item 5 that was stood down on the basis of attempting to find a solution to the problem of the question of intermittent payments. I would like to make the following motion.

**The Vice-Chair:** Mr Wessenger moves that section 1 of the bill, as printed, be amended by adding the following subsection:

“(4) Section 1 of the act is amended by adding the following subsection:

“(1a) An individual, a corporation or other entity continues to be an income source despite temporary interruptions in the periodic payments owed to a payor.”

**Mr Wessenger:** If I might go back in background, this motion was stood down due to concerns raised by Mr Elston regarding the application of support deduction to employers and industries which are characterized by frequent work stoppages. The ministry has made inquiries regarding the construction industry practices and we are advised that the practice is to terminate a worker if his or her services are no longer necessary, even if only for a short time period. In such cases, there is no further obligation on the employer to recall that worker.

This amendment we are proposing would not result in a continuing obligation on such employers to keep the enforcement program advised of any rehires. This obligation extends only to situations where there has been a temporary interruption, not a termination. The ministry intends to have public education materials, and the employer hotline will address this issue.

So the ministry does not feel there is any problem with respect to the construction industry because the practice is to terminate a worker, and the act would not apply in the case where the worker is terminated.

1550

**Mr Sorbara:** I would like to get that explanation again. Let's start off, if I might, by the parliamentary assistant explaining what he understood Mr Elston's concern to be.

**Mr Wessenger:** I understood Mr Elston's concern was that people in the construction industry are often hired by an employer; for instance, a labourer or carpenters, etc. They are hired by an employer, they work for maybe two months, then their services are no longer required for that project so they go off and work for somebody else, and then they come back to work for the same employer.

Mr Elston was concerned that it would be very difficult for that employer to keep track of these rehires and so forth, and he was concerned about the liability of the employer under the employee deduction program.

The interpretation we give to this amendment is that this amendment does not apply to a termination of an employee, which is what happens in the construction industry: It is a termination. It is technically a termination and he leaves that construction company to work for another construction company.

What the amendment is to cover is a situation—for instance, teachers; the example of a teacher who receives an income source which is interrupted during the summer because they do not get it. That is the type of situation. I

am sure there are other types of employees who have these interrupted periods too. Other than teachers, I cannot really think of them, but there might be someone who takes a leave of absence.

**Interjection:** Temporary layoff.

**Mr Wessenger:** Or someone who has a temporary layoff, yes, who is not technically terminated.

**Mr Sorbara:** It seems to me that the substance of the section has not changed very much, if at all. On one hand, the amendment we stood down says an individual does not cease to be an income source solely because of a temporary interruption in the periodic payments owed to a payor and the amended version says an individual, etc, “continues to be an income source despite temporary interruptions in the periodic payments owed to a payor.”

It sounds like on the one hand the negative is used in order to achieve the effect, and in the amended version the positive version is used, but the effect is the same.

I do not frankly care which section you use. I just take a little bit of offence at the suggestion that there is a different legal effect between the one section and the other section. That is what I would like to hear about.

**Mr Wessenger:** I do not think I would agree with you that the language is not terribly different. The positive is being used because it is felt it was clearer than the negative aspect. It clarified it more. The intention of the act is not to cover employees who are terminated, and the interpretation that the ministry places on this language is that it does not cover any employee who in fact has his employment terminated.

**Mr Sorbara:** So what happens to the worker who is laid off? That income source continues to be an income source.

**Mr Wessenger:** It depends what the obligation is of the employer. If a person is not working and the obligation still continues as employer and employee, in effect that there is no termination, then the section continues.

For instance, even in the construction industry you could have a situation of an obligation continuing. The union hall situation of hiring, through those types of sources—it is clear it is a termination in the construction industry. On the other hand, in the situation where—

**Mr Sorbara:** In the union halls, it may be clear, but not all of the construction industry is unionized. Some construction workers work for construction concerns that bring people on to the job and then lay them off.

**Mr Wessenger:** I think it would be quite clear that any time an employer would give a termination for the purpose of unemployment insurance, that would be considered a termination. That is clearly a termination.

**Mr Sorbara:** What is the effect of the termination?

**Mr Wessenger:** No more obligation.

**Mr Sorbara:** And if it is not a termination, if it is a situation such as this: “Johnny, you're laid off for two months. Come back. I'll give you a call in a couple of months or three months. I think we might be building a few houses, but I'm not sure yet”?

**Mr Wessenger:** It would definitely depend on how the employer dealt with it, if he gave the person a termination.

**Mr Sorbara:** He is not giving them a termination. He is telling him that he is laid off; he does not need him; "you don't have any work for the next three months."

**Mr Wessenger:** On the other hand, if the employee wanted to collect unemployment insurance, then of course it would be a termination because there would have to be a termination order to collect those benefits. Where a person is going to be laid off for any extended period of time, it would fall into the termination class, because it would be difficult to imagine an employee saying, "Well, I'm not going to collect UIC."

**Mr Sorbara:** The employee might not be eligible and, to tell you the truth, increasingly is not eligible, given what is going on in Ottawa, to collect UIC. I am trying to get an answer from you about a hypothetical where there is no termination, where a legal employer/employee relationship continues to exist.

**Mr Wessenger:** If there is a continuing obligation, then of course the obligation still remains on the employer to advise the director of the rehire. That is the continuing obligation.

**Mr Sorbara:** If there is a continuing obligation, what happens?

**Mr Wessenger:** The employer has an obligation to advise the director of the rehire.

**Mr Sorbara:** So how does this section apply differently in the case where there is a layoff and no termination? What is the difference, practically speaking? Do you have the answer?

**Mr Wessenger:** The question is: Is it a temporary interruption or is it a termination. That is really—

**Mr Harnick:** I do not think it matters, quite frankly, because the definition of "support deduction order" means "an order requiring any income source that receives notice of the order to make payments to the director in respect of the debtor named in the order out of money owed." If there is no money owing, there is the answer to your question.

**Mr Perruzza:** On a point of order, Mr Chairman: Mr Sorbara had the floor and he was addressing some question to Mr Wessenger and Mr Wessenger was responding to those questions. Then Mr Harnick decided at some point that he had some wisdom he wanted to impart to Mr Sorbara without obtaining the floor in any proper way. I did not see his hand go up; I did not see him being recognized by the Chair. He interjected and then was given the floor. Then we proceeded to engage in a three-way discussion between Mr Harnick, Mr Wessenger and Mr Sorbara and it went ping-pong back and forth three ways. I think if Mr Harnick wants the floor—

**The Vice-Chair:** Mr Perruzza, we do seem to have the essence of your point of order. Thank you very much. Mr Wessenger, if you would like to continue answering the question.

**Mr Wessenger:** I will wait until the—

**The Vice-Chair:** Any more questions?

**Mr Sorbara:** Yes, Mr Chairman. Not more questions; the same question. Just to tell my friend from—what riding is Perruzza from?

**Mr Carr:** Nobody cares.

**Mr Sorbara:** Nobody cares. What riding are you from, Tony?

**Mr Perruzza:** How soon we forget.

**Mr Sorbara:** Downsview. Okay. My friend the member for Downsview made a point of order trying to save me from the ruthless legal analysis of the member for—

**Mr Harnick:** Willowdale.

1600

**Mr Sorbara:** Willowdale. We are not getting this bill passed but we are learning what ridings members represent. I did not mind his interjection. I think he was just trying to be helpful in explaining, but if Mr Perruzza wants to raise that as a point of order, so be it.

But I need an answer from the parliamentary assistant to the Attorney General as to what the legal effect is of the section in the first place, in the two examples we have, that is, one being a termination and one being a simple layoff where an employment relationship continues to exist. I need to know what the different legal effects are of the section as proposed now, as opposed to the section which this committee adopted some weeks ago.

**Mr Wessenger:** I understand that if there is a termination, there is no obligation on the employer or—

**Mr Sorbara:** By the way, I do not mind if we have the assistance of the staff.

**Mr Wessenger:** Okay. Why do I not ask the staff to answer this, since this will probably help clarify.

**Ms Pilcow:** The purpose of this action was to make it clear that an income source continues to be an income source even if there is a temporary interruption in payments. The effect of a temporary interruption on the employer will be that the employer is then obliged to advise not only of the interruption but of a resumption of employment. Where there is a termination of employment, not a temporary interruption, the employer's obligation ceases at the point at which the employment was terminated, period. Notification of termination has to be given, but that is it. All this section did was attempt to explain that that income source continues to be an income source even where there is a temporary stoppage of work, where there is a continuing obligation to the employee.

**Mr Sorbara:** Are you telling me, then, that in the case of a termination and then a rehiring there is no obligation on the income source to notify of a rehiring?

**Ms Pilcow:** That is right.

**Mr Sorbara:** That is the same situation as a layoff, then.

**Ms Pilcow:** I do not know what you mean by layoff, exactly. If there is no continuing obligation on the part of the employer to rehire that particular employee, no more relationship between employer and employee, there is no obligation on the employer to advise of new employment. Where there is a—

**Mr Sorbara:** Of a rehire? What about of a rehire?



**Ms Pilcow:** Sorry. Of a rehire, a totally new rehire, there is no obligation to advise of. Now, if it is a continuing obligation and the person is just called back, the employer is then obliged to give that notice as well as the notice of the interruption.

**Mr Sorbara:** Are you telling me that, as an employer, if I fire someone, and therefore am no longer an income source for the purposes of this bill and then four months later rehire that person knowing that there is probably an outstanding support deduction order, I have no obligation as an income source—because, by definition, I am an income source—to advise the branch?

**Ms Pilcow:** That is right.

**Mr Sorbara:** No obligation whatever?

**Ms Pilcow:** That is right. The payor has an obligation to advise the program that there has been employment, but the employer does not.

**Mr Sorbara:** So that is the difference.

**Ms Pilcow:** That is the difference.

**Mr Sorbara:** Now, can you explain to me the different legal effects of the two sections, the one that we passed which says, “does not cease to be,” and the new proposal which says, “continues to be”?

**Ms Pilcow:** There is no different legal effect. The section is the same. The only thing that we have done is we have redrafted it to make it clearer what the intention originally was. So the intention was not to create a new legal meaning. We have clarified with the construction people that in fact when they do terminate people, it is a termination as opposed to an interruption.

The problem that Mr Elston raised was, what are these employers supposed to do in the construction industry, the fact that they do not have a problem if they are terminating these people? So what we have concluded is that this is not a problem as drafted, but notwithstanding that, we have looked at it again and said, “You know what? We can still make it simpler for people to read.” And that is what this section arrived at.

**Mr Sorbara:** So it does not really address Elston’s problem.

**Ms Pilcow:** What addresses Elston’s problem—Mr Elston’s problem—

**Mr Sorbara:** You can call him Elston; we all do. You can call him Murray.

**Ms Pilcow:** What addresses Mr Elston’s problem is the information that we now have from the construction industry. In fact, they do terminate employees when they leave employment, so it is not a problem for them to advise of rehiring. They do not have that obligation under this section or any other.

**Mr Sorbara:** Okay.

**Mr Carr:** To the parliamentary assistant: Do you see, as a result of this, companies or corporations terminating people where there is any doubt, rather than be legally bound by this, that they will say, “Well, we’re going to terminate him even though he might be coming back”? Do

you see this as making it more likely that the companies will terminate people?

**Mr Wessinger:** No, I do not really see that as being a factor in the question of the legal relationship between an employer and an employee.

Motion agreed to.

**Mr Perruzza:** Mr Chairman, was that unanimous?

**The Vice-Chair:** No, it was not.

**Mr Perruzza:** I did not note any dissension.

**The Vice-Chair:** Mr Sorbara, everybody must vote on the amendment, sir.

**Mr Sorbara:** I voted on the amendment.

**The Vice-Chair:** Did you? Okay. I did not see.

**Mr Sorbara:** Do you want a recorded vote? If you want a recorded vote, I want 20 minutes to think about it.

**The Vice-Chair:** Are there any other amendments to section 1?

**Mr Poirier:** Yes, Mr Chair. I discussed with the members of the three caucuses, legislative counsel, and I would like to move the following:

I move that the definition of “directeur” in subsection 1(1) of the French version of the bill, as printed, be amended by striking out “Bureau des obligations alimentaires” and replacing it with “Bureau des obligations alimentaires envers l’enfant et la famille,” and that wherever “Bureau des obligations alimentaires” appears in the bill it be replaced in each case with “Bureau des obligations alimentaires envers l’enfant et la famille.”

**The Vice-Chair:** Thank you very much, Mr Poirier, but we have to have unanimous consent to move this motion.

**Mr Poirier:** Even though we are still on section 1?

**The Vice-Chair:** This motion also applies to section 2, which we have already carried.

**Mr Poirier:** Okay, fair enough. So could I request unanimous consent?

**The Vice-Chair:** Is there unanimous consent to move this motion? Thank you.

Agreed to.

**Mr Poirier:** I realize that after consultation with legislative counsel and their translators, technically in legalese, “Bureau des obligations alimentaires” would be sufficient, but keeping in mind the spirit of SCOE and its eventual successor, and having worked in my office for a number of years with this particular act, obviously the philosophy behind it and the spirit, I wanted to add “la famille et l’enfant” also, to keep in line with what has been done in the English-language version, and I think that is very important. As the new members will be working quite a bit with this new law and its proposed amendment, you will become very familiar, like those of us who have been here for a number of years, being the oldest sitting member on the committee, with this law. It is going to be quite a bit of work, and I think in all due respect for the people who fall victim to those who do not support the way they are supposed to according to the law, I wanted to add “l’enfant et la famille” to the bill.

**Ms S. Murdock:** I support this absolutely, but when we get to section 18, which is the short title of the act—I just want a clarification here. Is this going to be all changed if the act's name is changed? We did not do that while I was not on this committee, did we? I understand that when we get to that section we are going to be discussing a different name for the act. If that is the case, are we premature on this? Do you get what I mean?

**The Vice-Chair:** No, at this point, there are no amendments to change the name, as far as we have been advised.

**Mr Sorbara:** I want to begin by saying that I am going to support the amendment of my colleague the member for Prescott and Russell, because I think his understanding of Ontario's other language is without parallel, and he adds greatly to this Legislature in his ability to assist not only legislative counsel but all aspects of the Legislature and the Parliament in ensuring that the French version, la version française, of documents we create in this Legislature is true to the French language. So if it is his view that the correct version for child and family support office should be "Bureau des obligations alimentaires envers l'enfant et la famille," I take his word for it, notwithstanding that legislative counsel or our translator suggests that we could do with a more economized version, "Bureau des obligations alimentaires."

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But having said that, I must tell you that the thing that gives great offence is the English-language version, and that is to say that we are using this act to try to create an impression—I would say a misimpression—of what this law is going to be about. Remember that the old title, the title that we are going to do away with, was the Support and Custody Orders Enforcement Act. So at least the government could be honest enough to describe the office as the child and family support orders office. Remember Howard Hampton's statement in the Legislature when he introduced this thing? He talked about trying to eliminate child poverty. That was not true. He is trying to give new enforcement techniques to a ministry that is under siege. My friend Ms Murdock is giggling behind her hands, although she knows, through years and years of experience as a constituency assistant, how badly this joint operates.

You have to defend it now. You have to defend the operation of this office because you are on the government side. But we can acknowledge in this committee that this office is not working very well right now, that hundreds and hundreds of people who are to benefit from support orders are not getting the money. Part of the problem is the way in which the office works, and part of the problem is that they do not have the necessary tools to extract the funds where they are available.

This act gives that branch the necessary tools. Maybe the Treasurer will give the branch more money, and then maybe we will have solved the problem. By the way, without that money these new tools are not going to work very well. But in the midst of this we have to change the title to—let's see what the new title is going to be; Ms Murdock referred to it—the Child and Family Support Act. Give me

a break. Come on. Let's not do this. Let's not engage in the pretend. Let's at least add the words "support orders" to the title. Let's call it what it is.

Look at the trouble the government is getting in already in trying to pretend that it is doing something different than what it is really doing. The whole thing with Peter Kormos is a case in point. Honest to God, it is. I leave it to the Chair to—

**Ms S. Murdock:** Are we still talking about Mr Poirier's amendment? I just wanted to clarify. I was not sure.

**Mr Sorbara:** Maybe I will just have a little break by asking the question of the parliamentary assistant to the Attorney General as to why the name of the act and the office is being changed. Could I hear about that, because that will help me decide whether my colleague the member for Prescott and Russell is making an important amendment or not.

**Mr Wessenger:** I like the name of the act.

**Mr Sorbara:** As it exists now?

**Mr Wessenger:** The way it is proposed: Child and Family Support Act. I do not think that adding "orders" to anything would—

**Mr Sorbara:** Okay. Then let me ask—

**Ms S. Murdock:** On a point of order, Mr Chairman: Section 18 is the name of the act. We are not discussing that, right? We are discussing Mr Poirier's amendment replacing the French words "Bureau des obligations alimentaires" with "Bureau des obligations alimentaires envers l'enfant et la famille."

**The Vice-Chair:** You are right, Ms Murdock.

**Mr Wessenger:** I am quite prepared to recommend the acceptance of that amendment, because I think it goes along with the English version, so I think it only makes sense.

**Mr Poirier:** To alleviate the member for Sudbury's concern, by the time we get to deal with section 18, legislative counsel has told me they will help me prepare a proposed amendment to make sure that the short title is also corrected to conform with is going to be accepted right now for the act.

**Mr Sorbara:** I am going to be supporting the amendment of my friend the member for Prescott and Russell. I just want to tell you once again—and then I am going to be done with it for this time—that to call this office the child and family support office just exacts a little, tiny deceit on the people of the province of Ontario. That is all. It is not big; it is not tragic; it does not bring the government down. It is just a tiny deceit.

Right now we call it SCOE, support and custody orders enforcement. That is what it is. You just tell the people what it is. It is an enforcement office. It is like a sheriff; it enforces the law. It is like cops. They do a good job and they are under siege and they deserve to have more money, and we hope the Treasurer provides more money in the budget. But to change the name of the office to the child and family support office is a deceit, and it is too bad because it says to me that this new government wants really to create an impression: to govern not by substance but by imagery.



The Tories did so much of that from 1981 to 1985. Do you know why? They lost their agenda, and if you want to know the truth we started to do a little bit of that between 1987 and 1990, and some people said that in a way we had lost an agenda, and maybe we did not have as aggressive an agenda as we should have had. But, my God, when the saviours of the world are in power for six months and they propose to impress the people by changing the name of an enforcement office and to suggest that it is going to support families and children, that is a little deceit, and you need not undertake it. You can continue to call an enforcement office an enforcement office. You can continue to tell the people that this office is an arm of the government that enforces government orders, and now it has a new tool called the support deduction order. You need not get into this nonsense of changing the name, because all it does is give Howard Hampton an opportunity to make a statement in the House when he introduces the bill and then for the next 16 years backtrack, because—

**The Vice-Chair:** I am sure we would appreciate it if you would keep your comments to the motion on the board, please.

**Mr Sorbara:** Okay. My friend the member for Prescott and Russell introduced an amendment to make sure that the French version of the act complies with the English version of the act, and as I said earlier, he is one of the pre-eminent experts on these matters and I take him at his word. I regret to say that this amendment is only necessary because the government has chosen to—I cannot find any other way to say it—implement just a little, tiny fraud on the people of Ontario by changing the name of this office. I think that is regrettable, but I am going to support my colleague.

Motion agreed to.

La motion est adoptée.

**The Vice-Chair:** Any further comments on section 1?

**Mr Wessinger:** Yes. I would like to have old page 5 withdrawn since it is still under consideration.

**The Vice-Chair:** Shall section 1, as amended, carry? All in favour—

**Mr Sorbara:** Hold on a second. I take it that we have not yet carried all of section 1 because of the standing down of this matter. I have some concerns over the definition of support deduction order. I wish I had available my annotated copy of this bill. If you will just bear with me for a moment, Mr Chairman.

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**Mr Fletcher:** Have we not already done this?

**Mr Sorbara:** No, we have not done it yet, Mr Fletcher. Mr Chairman, if I might just ask that we stand down the final passage of section 1, because I do have one concern. To tell you the truth, this is not just political haymaking. On my review of the act in its entirety last evening, there was some inconsistency with the definition of support deduction order, which I am not going to be able to bring to the attention of the committee without my notes, and unfortunately my notes are at home. So maybe

we could just stand down that matter until the next day we consider it.

**The Vice-Chair:** We have to have unanimous consent to stand down section 1. Is there unanimous consent?

Agreed to.

Section/article 3:

**The Vice-Chair:** We move on to amendment 11.

Mr Carr moves that section 3c of the act, as set out in section 3 of the bill, as printed, be amended by adding the following subsection:

“(3a) The director shall make a reasonable effort to contact and confirm an income source before serving the notice in order to ascertain the address to which the income source wishes the notice to be sent.”

**Mr Carr:** I have no comments, other than the fact that I think what we have done originally is discuss this and I think there was some agreement on this.

**Mr Wessinger:** If I might just clarify my recollection of the situation: The amendment was proposed at the last committee meeting. There were some discussions of attempting to amend it to provide for a discretionary element with respect to the exercise of this by the director, and it was proposed to put in the words “where the director believes it is necessary.”

However, I am going to ask legislative counsel to comment on that proposed amendment, because legislative counsel has advised us that there is a difficulty with including a discretionary item in this proposed amendment; it would create problems with respect to the whole bill. So if he could just clarify that situation to the committee.

**Mr Revell:** I am only speaking to the element, not Mr Carr's full motion. Mr Carr's motion, which has been read into the record, imposes a clear obligation on the director to do something. But there was discussion the last time this item was on the floor to add words to the effect that “the director shall, where the director believes it necessary.” So I am speaking to a motion that in fact has not been put. I was concerned about the possibility of adding a discretion because many, many things end up in law where you try to confer a discretion on a person to do one thing and then questions start to arise elsewhere as to whether or not you have a discretion to do other things.

If I say, “The director may do this,” then the question arises, “May the director do that?” There is no statement in the law as to what the director may also do. There is a Latin term that translates loosely into English as “to include one thing in a law excludes other things.” So if you start including discretionary powers of one sort, then you may be excluding other kinds of discretion. Obviously the director, in this kind of law, where there is a lot of administrative work to be done, needs the discretion to do those administrative things, and this is an administrative power.

Now, as I say, I am not speaking to something that confers a clear obligation, because to include one clear obligation does not exclude discretionary powers to administer the law in other respects. So I am only dealing with the discretionary aspect.

**Mr Wessenger:** If I might just add some clarification: Certainly our position was that we were opposed to the amendment originally on the basis that it would require an obligation in every case, and this would impose—because in most cases it is not necessary—a major additional expense on the part of the program. So for that reason we had opposed the original amendment. Then discussion arose about having some discretionary element in it, which, in principle, was agreeable to all sides. But we now find that we cannot really incorporate this discretionary element without creating difficulties for the whole act: consequently, we have to propose the amendment on the original basis.

It is unfortunate we cannot come up with a way of incorporating a discretionary element, but we just cannot. So we have to deal with it administratively through the program. The director is well aware of the attitude of the committee, and I am sure the director would deal with it in an administrative way rather than having it incorporated into the act.

**Mr Harnick:** Why can we not have as part of that clause that counsel may request the judge to make that part of an order? Then the element of discretion is gone, and if counsel deems it necessary to request that the director make reasonable effort to confirm and contact an income source, the judge may include it in his order. Why not? Easy.

**Mr Wessenger:** Maybe I will let staff answer that question.

**Ms Pilcow:** It seems an odd thing to put into legislation what counsel can request as relief. Counsel can ask for anything as relief when they are before the court, and the court can grant that relief if it is appropriate. What the court will be asked to do is inquire the names and addresses of all income sources. If counsel wants to be specific and say, "Your Honour, we want the address of the payroll office," that is what the court will do.

**Mr Harnick:** But I suppose there may be circumstances, and I suspect that this speaks to an income source that has more than one address or where an employee may be moving from place to place, and it may well be that counsel for the person receiving the support order wishes that an inquiry be made so that some administrative errors do not occur.

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**Mr Pilcow:** There are a couple of things: Mr Harnick, you were not here the last time we discussed this. One of the answers to your question is that currently we ask for the payroll office and we will continue to do that, so that is going to be the upfront request in any event, whether or not it is specifically requested. Then the further point—

**Ms E. Mills:** I think that with this clause, the last time we had the discussion, there is also a distinction between when we are talking about a new support deduction order that is made at the time we are talking about a new support order and situations that occur later on.

When we are talking about those where we are dealing with the initial support deduction order, at the time and in the courtroom, as the judge is making inquiries, those inquiries should be made. The responsibility should be on the payor and the parties to that support deduction order

and support order to make that very clear up front what the particular address is, not for the program to have to go and find it.

**Mr Harnick:** Except you know and I know that if I am counsel for someone obtaining a support order and I know whom I need to get that money from and I know that that person may have an odd sort of business or an odd sort of income relationship, I may want, as counsel for the person seeking the order, the opportunity to have the judge say, "Let's do that." Every person who comes before the court is not working at General Motors where there is one payroll office. You may have self-employed people moving all over the place. Or you may have just people in odd business relationships. Certainly, as counsel, I would like the opportunity to say to the judge, "Judge, I'd like the director to make that effort."

**Ms Pilcow:** Subsection 3a(3) specifically requires the court to "make such inquiries as it considers necessary to determine the names and addresses of each income source of the payor." So that is something which has been specifically put in the legislation to make the courts make those inquiries.

Now, once the director gets it, if there is an ambiguous address, the director will still make further inquiries to ensure they are getting the right place.

**Mr Harnick:** But this is more particular. This speaks to an odd situation that may arise.

Look, if you do not want to put it in, do not put it in, but I am just saying that there may be an odd situation where you may want this section to help the person who is getting the support order.

**Mr Winninger:** Just two brief points: Technically, I do not see what impediment there would be to a judge who wants to make such an order to give such directions to make them anyway, especially on consent of counsel.

**Mr Harnick:** What if there is not consent and the judge says, "I don't have the authority"?

**Mr Winninger:** Just a minute; that was just the point I wanted to make technically. Substantively, if I were a payor spouse and I had a small, closely held corporation and the office contacted me ahead of time to find out where to send the notice and I did not want to pay support, I could easily give the wrong address and that would throw off the process, possibly for months. The people who need the support most would be the big losers. That is the point I wanted to make.

**Mr Sorbara:** Mr Harnick has an interesting suggestion. There is no motion on the table to consider such an amendment, so I am not sure why we are discussing it, but I would like to get back to the discussion of Mr Carr's motion, which is a reasonable motion.

We stood it down because we thought maybe we could shape it so that we could pass it, but I think the point was made by the director herself, if I recall the testimony, and the point she made I think adds authority to the proposition that we should pass Mr Carr's motion.

I am sorry, it was not the director. It was our friend from the ministry who referred to subsection 3a(3), which says "the court shall make such inquiries as it considers



necessary to determine the names and addresses of each income source." So right in the statute we put a statutory obligation on the court to make reasonable inquiries. Why is it that we should not put in the statute the same sort of requirement on the director? Why should we not direct the director, when we write the law, to make every reasonable effort? It is very much like what we said the court should do.

I appeal to my New Democratic Party friends on this committee just to think about it a little bit. You will not bring down the government if you support this amendment. All you will be doing is changing the act a little to make sure the director has it right; just to make a reasonable effort. The director can always defend herself or himself by saying, "Yes, I thought that was reasonable in the circumstances," and any lawyer worth the \$250 an hour that he or she charges now will tell you that it is not a very difficult test for the director to pass. But it is a little direction to the director to say: "Get the address right. Don't send these things out. After all, they contain highly personal information. Make a reasonable effort to"—how did you phrase it, Gary?—"contact and confirm the name and address of the income source."

Anything wrong with that? Do you folks in the New Democratic Party really find that offensive, to tell this woman over here, who is the director now, that she should make those reasonable efforts? What is wrong here? What are we afraid of? It does not mean that the bill is going to be changed in principle or in theory; it just says we want to protect the privacy of individuals, an additional little protection. Like a painter painting a painting, it is an additional little brush stroke. It gives it a little bit of detail that the bureaucrats did not think of. But just because the bureaucrats did not think of it does not mean it is wrong.

The Premier is not going to deny you a right to take Kormos's old job just because you supported this in committee, even though the director does not support it and the minister does not support it. Take courage. Look, it is just a little bit of protection. Maybe in the future, in the next 10 years, one poor SOB who is the subject of a support deduction order will be protected because you did this.

**Mr Perruzza:** On a point of order, Mr Chairman: What do those letters stand for, Mr Sorbara? I do not know.

**Mr Sorbara:** SOB generally stands for son of a bitch.

**Mr Perruzza:** Just let him spell it out. There you go. Let's not speak in letter form.

**Mr Sorbara:** You should give my friend the member for Downsview a book on what a point of order here is and what a point of order is not. Asking what SOB stands for is not a point of order. And I will tell the SOB—I mean, I will tell my friend the member for Downsview that I do not mind the interruption at all.

All I am asking him to do is think about the opportunity to stand up and be counted. Look, it is a simple little thing. It does not qualify this woman's ability to run this agency whose name we are now going to change. It just gives one little bit of protection.

I am sorry if I am interrupting the sleep of my friend from—

**Mrs Mathysen:** No, it just seems a little repetitive, that is all.

**Mr Sorbara:** It is repetitive, but we would not have to be so repetitive if the government could agree to some other amendments on this bill.

In any event, I plead with you. This is not the official opposition's amendment; it is Mr Carr's. He is a new member. He is not here to bring down the government with this amendment. He has not been around here very long, but he thought of something. He said: "I can make this a little bit better. That's what I was elected to do. I can make sure that the director does not just arbitrarily send out these notices." Because after all, these notices have very personal information. The fact that a person has separated, that he or she had been the subject of a court order, who the employer is and all those other things are right there in the document. This director is a very competent director, but it may be that some future government appoints a director who is somewhat more arbitrary. I do not think that will happen, but it might happen.

We are here to make sure that our laws protect people. Mr Carr says: "I have one little additional protection before we pass this. Would you please consider it?" It is not a matter of party policy. None of you campaigned on this during the election. You got elected—

**Mr Bradley:** They all get their marching orders.

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**Mr Sorbara:** You do not have to take these marching orders, as my friend from St Catharines mentions. You all have your marching orders, but you do not have to follow them in this case. So I put it to you, you are the party of fairness and justice and freedom for all, social conscience—exercise a little bit of freedom, for God's sake. Think about supporting Mr Carr. It is not generally that we got these things from the Progressive Conservative Party in the past, and this is a breath of fresh air, so do it.

Interjections.

**The Vice-Chair:** Excuse me. I would appreciate it if one person would talk at a time, please.

**Mr Sorbara:** I do not have much more to say on this, but all I can say is—

Interjections.

**The Vice-Chair:** Any further comments?

**Mr Sorbara:** No, no, hold on a second. We are voting for it not because there is a conspiracy to break down the government. We have just considered it; my friend from Prescott and Russell and I and Mr Elston before have considered it. We do not think that the director is going to have a problem living up to it, and if she gets the money that she needs from the Treasurer, she certainly will not have any problem considering it. So I suggest to the government members that they just let go of the chains for a few minutes. When the Chairman says, "All those in favour of the amendment," take a risk, put up your hand. The Premier probably will not even find out about it.

**The Vice-Chair:** Any further questions. Mr Perruzza?

**Mr Perruzza:** Thank you for letting Mr Sorbara say that all over again. I was really looking forward to it.

**The Vice-Chair:** No problem. Seeing no further questions, all in favour of the amendment? Opposed?

Motion negatived.

**Mr Sorbara:** Six months and you are in the grip of the bureaucracy.

**Ms S. Murdock:** And we love it.

**The Vice-Chair:** Excuse me, Mr Sorbara. Now we move on to the yellow 15a, but before we do that, we have to have unanimous consent to reopen sections 14 and 15. Do I see unanimous consent? Thank you very much.

Mr Wessinger moves that subsection 3c(10d) of the act as set out in section 3 of the bill, as amended by Mr Wessinger's motion of 27 February 1991, be struck out and the following substituted:

"(10d) Despite any other provision of this act, no deduction shall be made under a support deduction order in respect of amounts owing to a payor as reimbursement for expenses incurred for professional services and for things provided under a medical, health, dental or hospital insurance contract or plan."

**Mr Wessinger:** The reason for this amendment to the prior amendment is that we had consultation with the Canadian Life and Health Insurance Association and they were concerned about the term "medical" not being broad enough to cover health benefits such as reimbursement for expenses incurred to purchase eyeglasses, prosthetic devices, etc. We have accordingly added health plans to medical, dental or hospital plans to include such benefits, and the other change, as we made it clear, that they are reimbursements for expenses incurred.

**Mr Harnick:** I may be sort of looking for things that do not exist, but when you talk about "amounts owing to a payor as reimbursement for expenses incurred for professional services and for things provided," I think "things provided" is really not as descriptive as the wording should be and there must be other precedents. Why can they not just be to a payor as reimbursement for expenses pursuant to a policy of medical health, dental or hospital insurance? What is a "thing"? Is a thing a prescription? Is it a service for a chiropractor? I do not know what a thing is, and I think the language is very imprecise. I have never seen bills written where the word "thing" is used.

**Mr Poirier:** Unless we have seen strange things in bills.

**Mr Harnick:** Surely there have to be loads of precedents to follow to avoid that wording, and I think you should stand this down.

**Mr Wessinger:** could ask legislative counsel, perhaps, for some comment on the use of the word "things."

**Mr Revell:** Over a long period of time, bills in this Legislature and, in fact, every Legislature, have been criticized for using long lists of words to describe simple concepts. A thing is obviously not a professional service; that is not a thing, but the rest of those things that come under a medical plan of any sort are things. If you get a pair of eyeglasses, those are a thing; if you get a hearing aid, that is a thing. If you took a look at the old schedule C under the Insurance Act, which dealt with, whatever that was called, no-fault benefits or whatever under schedule C, it

had a list that went on into infinity, going through hearing aids, eyeglasses, artificial limbs and on and on and on and on. The word "thing" describes, in my opinion—and this is something I looked at before recommending this—all of that and uses one word where we used to use 20 with always the possibility of leaving one of them out.

**Mr Harnick:** The difficulty in terms of statutory interpretation, when you list several items, my understanding is that that is how you define an item that may not necessarily be provided for. Without limiting the generality of the foregoing, you then list things, and if something shows up that is not on the list, that item is determined on the basis of statutory interpretation, based on the meaning of the words that go before it. But "things" does not do that. I do not mean to be picky, but I think you can make this better. I have never seen a statute with the word "things" in it. I have read a few of these. Paul, have you ever seen a statute with the word "things" in it? In insurance?

**Mr Wessinger:** I think I should go by legislative counsel, since they have actually drafted this for your motion as well as ours. Actually, it was the PC motion—

**Mr Harnick:** I am just saying you are better with a list that does not necessarily have to be exhaustive, but at least the list is there so that if something comes up that is not on the list, it can be interpreted on the basis of statutory interpretation on the same basis as the list appears. Go ahead, do whatever you like, it does not make any difference to me.

**Mr Revell:** There is the classic damned if you do, damned if you don't. I was thinking back to Gary Larson's *Far Side* a few weeks ago where there is the devil and two doors, damned if you do and damned if you don't. We have this problem, and we have always had it in legislative drafting. I agree that the proposition you put forward of legislative interpretation which, like every other legal concept, has a Latin expression to describe it, called *eiusdem generis*, which means that like things—

**Mr Harnick:** I could not remember that. I have not seen that for a while, but that is what I meant to say.

**Mr Revell:** —shall be interpreted like. On the other hand, we may recall that because of the way sections 91 and 92 of the Constitution Act, 1867 set out long lists, we have spent a long time interpreting what those lists are. I am not trying to defend this as the best approach. If the members think there is a better approach, I will take your advice on that. But I can say that my research indicates, and after a great deal of thinking about the plain language issues and having regard to the concept of *eiusdem generis*, if we list 20 things and something comes along that is a thing that is not exactly like those 20 things you list, and you have a list that goes on, "Da da, da da, da da, da da, and such other things," the court is going to interpret that "and such other things" having regard only to the first part of the list. You have two different problems. If you want to limit it, then by all means let's start with the list and—no, we will take instructions. After all, it is the House's bill and not mine. You see, I do not think you really have that problem, only because you are dealing with items as opposed to things included in an insurance policy. But it does not bother me.



1650

**Mr Sorbara:** Let us move on, Mr Chair.

**Mr Winninger:** I agree with what Mr Harnick has said. In fact, he literally took the words out of my mouth. I do, I believe, have a very simple, elegant amendment to the language used which would omit the word "things" and still connote exactly the meaning that is already there.

I would simply say after the phrase, "owing to a payor," "for expenses reimbursed under a medical, health, dental or hospital insurance contracted plan," and that omits the two lines including the word "things" but it embraces the concept connoted by this drafting. So I would simply say, "to a payor for expenses reimbursed under a medical, health, dental or hospital insurance contracted plan."

**Mr Harnick:** Yes, that is essentially what I said in the beginning. The only other thing I can add, and I do not know the answer—

**Mr Winninger:** I can now yield the floor. I have said what I wanted.

**Mr Wessinger:** Could we perhaps stand this item down again? Legislative counsel has cancelled it.

**Mr Harnick:** Could I make one comment? If we are going to stand it down and it is going to be examined, you may wish to differentiate or include any group plan of insurance or private plan of insurance and go back to your definitions in the earlier section. I just throw that out, but—

**The Vice-Chair:** Is there unanimous consent to stand this down?

Agreed to.

**Mr Sorbara:** The government still has not got it right.

**Interjection:** Lawyers do not like the word "things." That is the thing.

**The Vice-Chair:** Now we move on to amendment 19, please. Mr Carr.

**Mr Carr:** Noting that page 18a which we will be looking at next takes into consideration 19, I withdraw the PC motion number 19.

**The Vice-Chair:** Thank you very much. Now can we move on to 18a please?

**Mr Sorbara:** Sir, I could not hear what Mr Carr said about 18a.

**The Vice-Chair:** Mr Carr just withdrew page 19.

Mr Wessinger moves that subsection 3c(12) of the act, as set out in the government motion, be struck out and the following substituted:

"(12) The director or the income source, individual, corporation or other entity, as the case may be, may, on notice to the other of them bring a motion to the court that made a support deduction order or to the appropriate court under subsection 3k(9) to determine,

"(a) whether the income source has failed to comply with the order;

"(b) whether the amount the income source is deducting and paying to the director's office under the order is correct; or

"(c) whether the individual, corporation or other entity is an income source.

"(12a) In a motion under subsection (12), the court shall determine the issue in a summary manner and make such order as it considers appropriate in the circumstances.

"(12b) A motion shall not be brought by an income source under clause (12)(a) or (b) unless the income source has given written particulars of the proposed motion to the director at least 14 days before serving the director with notice of the motion.

"(12c) A motion shall not be brought under clause (12)(c) by an individual, corporation or other entity, until at least 14 days after the date that notice was given under subsection (11).

"(12d) Subsection (12c) does not apply to the director."

**Mr Wessinger:** This redraft was in response to the Conservative amendment, and we thought it was a good amendment. It is the same terms, except we provided for 14 days to enable the director to attempt to resolve the matter without the necessity of having a court application. It seemed to make good sense.

**Mr Harnick:** A couple of things: The words "to the other of them" really make no sense. Why is it not like any other motion, "may, on notice, bring a motion"?

**Ms Pilcow:** The difficulty in this area is that there are a number of parties. There is the party to the support order and then there is the director and the person paying support. So it is not always clear who the other party on a motion is, and in many cases the other party is the recipient or the payor. In this case it is the director and the support payors. So that is why—

**Mr Harnick:** Why do you not just put, "on notice to the director and the support payor"?

**Ms Pilcow:** Well, it is not. They have to give notice to the other of them. I do not know what other way you can say it. It depends who is bringing the motion. If it is the director bringing the motion, the director has to give notice to the income source. If it is the income source, the income source has to give notice to the director. Only those two.

**Mr Harnick:** I would still submit that any lawyer knows that "on notice" means notice to all concerned.

**Ms Pilcow:** But it is not notice to all concerned. It is only notice to the other. The support recipient here does not receive notice of this motion.

**Mr Harnick:** Because the words, "to the other of them"—

**Ms Pilcow:** Perhaps legislative counsel can speak to those words.

**Mr Harnick:** There has to be a better way to draft those words. Do you want me to finish with my other bits of confusion, or do you want to deal with that alone?

**Mr Revell:** I did not draft the motion, Mr Harnick; that was moved by Mr Carr at the last session. In fact, this picks up the language from the motion that was moved by Mr Carr in the last session.

It was drafted in my office after consultation, in the normal fashion, I assume, but I have to say that I was of the same impression from this as has been given by Ms Pilcow, that it is the people in this list that we are looking at—the director, the income source, the individual, corporation or

other entity—who is bringing the motion. So whoever is bringing the motion has to give it to the other ones in this list.

**Mr Harnick:** We have listed them all.

**Mr Revell:** But there are other parties. This is the point that I am getting at. This operates at two levels, because there is a support deduction order and there is a support order also operating and there are different considerations at these two levels. I think this says quite simply that we are dealing with the people on the list.

**Mr Harnick:** I do not disagree with you. There is no fundamental disagreement; I just think it is badly worded. It looks unprofessional.

**Ms Pilcow:** The alternative is to make it unclear as to whether the support recipient is going to be a party to this motion. It would be most unfortunate if support recipients were dragged into these disputes where they did not need to be. That is why the wording is the way it is.

1700

**Mr Harnick:** Is there no way that instead of the indented (a), (b), and (c) you cannot use (i), (ii), (iii)? Because you have so many a, b's, and c's.

**Mr Revell:** Mr Harnick, the Statutes of Ontario have existed for over 100 years now, and there has been a slow evolution of the style. In this case I submit that what we are looking at is labelling, and there are many, many labelling systems. You are right; there have been criticisms of whether you should use a, b's or c's or i's, ii's and triple i's and whether we use Romans or Arabics and whether we use decimals or do not use decimals. When it comes down to it, the only thing I can find is: Do we have a system of citation that is uniform? In fact, the system that is used in Ontario is uniform with what is being used across Canada. That is my justification for it.

**Mr Harnick:** I do not dispute that. But if I am standing in front of the judge, and certainly if I was the judge and I referred to section 12a I do not know whether you are referring to 12a or 12(a). You have essentially two 12a's.

**Mr Revell:** Yes, I realize the problem you are talking about.

**Mr Harnick:** From a purely practical point of view.

**Mr Revell:** Yes. We have had this kind of problem—

**Mr Harnick:** Can you not just change it to 12(i)? Just so that within the section it is not confusing.

**Mr Revell:** Okay, the 12(a), that is the most traditional method of the first level of subdivision within a section or subsection. As to the rest, the criticism that you have with respect to the difference between subsection 3c(12) and the immediately following clause, which is (12)(a) and (12)(b) and (12)(c)—

**Mr Harnick:** Right now I do not even know which (12)(a), (b), and (c) you are talking about.

**Mr Revell:** Let's take a look. Subsection 3c(12) is a first level of subdivision, followed by the clauses (a), (b), and (c) and—

**Mr Harnick:** That is right, but if I want to refer to 3c(12)(a), I am going to say section 12, clause (a)?

**Mr Revell:** If you wanted to deal with the director, "whether the income source has failed to comply with the order," that is clause (a) of subsection 3c(12).

**Mr Harnick:** People do not speak that like that in a courtroom, but you go ahead if that is the way you like it.

**Mr Revell:** Probably the best way to handle this is—I would be quite willing to meet with the member to discuss this issue. People think that some of these decisions are taken arbitrarily and willy-nilly, and they certainly are not. I appreciate the member's concern. It is something that has taken up a great deal of time, for example, at the Uniform Law Conference of Canada where some of the very best legal drafters have been thinking about these issues off and on over long periods of time. I certainly would like to come up with a system that is truly the ideal system. We live with this constant problem. I do not know if you have the reprinted bill or the small version of the bill.

**Mr Harnick:** I have that one; I have the reprinted one as well.

**Mr Revell:** In the small version of the bill, this kind of numbering problem, and I do not want to belabour the committee's time with this, but if you take a look on page 32 you will see that there is section 12 followed immediately by section 18. Section 12 is the bill; section 18 is the amendment to the existing act. You always have these kinds of numbering problems and citation problems, and I can assure the member that we have been working and working and working to try and resolve them. I would certainly be willing to meet with the member at length to discuss suggestions and recommendations for improving, because anything we can do—we did try to help the members in this 12-18 thing by putting the section 12 in bold type and section 18 in light type to distinguish between plumbing words in the bill and the actual substantive provisions. But I am afraid that at this stage I cannot help it very much further than that. I can say that when the bill is reprinted, what you see as idem (12a), idem (12b) and idem (12c) will be renumbered into Arabic numeral sequence so that that will at least be cured of that problem.

**Mr Sorbara:** I do not have a problem with this. I think it is nice to see that the government is accepting Mr Carr's amendments. They could have done that with his other amendments without the world caving in.

**Ms S. Murdock:** It is the grammar teacher in me, because I see where Mr Harnick is coming from. Maybe I am wrong or I am interpreting it incorrectly, and if I am I am most happy to be corrected. "The director or the income source, individual, corporation or other entity," are four different things, correct? "As the case may be, may, on notice to the other of them": I understood from your comments that you are only dealing with two parties at any one time, but the way that reads grammatically is that any one could give notice of motion to any one of the other three or to all of the three.

**Ms Pilcow:** There will only ever be two parties. There will be the director and one of the other three people listed: an income source, individual, corporation or other entity. That will be one person. It will be one of those or one entity and it will be one of those listed. There will only



ever be two parties, though. But we do not know who is going to be an income source, because one of the disputes that can be brought is that, "I am not an income source." In that event that entity may not be an income source. It may be an individual; it may be, I cannot remember what the—

**Mr Wessenger:** Corporation or other entity.

**Ms S. Murdock:** So "the other of them" would be one of the other, whichever one it was giving notice of motion.

**Mr Sorbara:** You know why the government is stalling on this bill, Mr Chairman, on these technical small—

**Ms S. Murdock:** Is the pot calling the kettle black?

**Mr Harnick:** I just want to ask legislative counsel, can we just get rid of the words "of them"?

**Mr Sorbara:** We would object to that very strenuously.

**Mr Harnick:** Because it is just "to the other." Then it sounds professional.

**Mr Sorbara:** Is there unanimous consent, Mr Chairman, to stand the question of deleting "of them" down and we will consider this section at a later time?

**The Vice-Chair:** Is there unanimous consent to stand 18a down?

**Ms S. Murdock:** No.

**The Vice-Chair:** No. Mr Harnick, are you moving an amendment to strike down those two words?

**Mr Harnick:** Yes.

**The Vice-Chair:** Mr Harnick moves an amendment to delete the words "of them" in subsection 3c(12).

Any comments or questions on the amendment to the amendment?

**Clerk of the Committee:** This looks out of order.

**The Vice-Chair:** Mr Harnick, I am sorry, you are out of order. You cannot amend an amendment.

**Mr Harnick:** So we end up with a badly worded bill. Okay.

**Clerk of the Committee:** It is an amendment to an amendment to an amendment. There is already an amendment to an amendment on the floor and Mr Harnick would technically be the second amendment. We can only have one amendment to an amendment on the floor at a time.

**The Vice-Chair:** My apologies to the committee.

Mr Wessenger, would you accept Mr Harnick's amendment as a friendly amendment?

**Mr Wessenger:** I will leave it up to legislative counsel to make a decision on this, because this is a technical question.

**Mr Sorbara:** On a point of order, Mr Chairman: I would like to know whether unanimous consent is needed to consider a friendly amendment so I will know what amendment to what amendment we are discussing.

**The Vice-Chair:** No. As long as Mr Wessenger wants to accept it, you do not need unanimous consent.

1710

**Mr Wessenger:** No, you do not. On the basis that legislative counsel has indicated that he does not deem a difference in the interpretation by the deletion of the words

"of them," I have no objection to having that amendment. I consider the motion amended.

**Ms S. Murdock:** If I may answer that: I did teach grammar for a number of years, and he is correct because it is an adjective clause and it would not change if it was removed.

**Mr Sorbara:** Do I take it, then, that the motion before the committee has been amended to strike out the words "of them" then?

**Mr Wessenger:** Yes. It is accepted.

**Mr Sorbara:** This is truly great progress. We are getting our lessons in grammar.

I just want to tell the committee that on questions that are purely of a drafting nature, through five and a half years of this work I have, I think in almost every case, deferred to legislative counsel, and I do not think have ever got in trouble as a result of that. I do not think it is of any importance whatever whether the words "of them" are in there, but this province has the benefit of probably the most outstanding legislative counsel in Canada, if not North America, and our statutes are the pride of North America. I do not think committees should get into the business of second-guessing on these very technical matters, although I know that Mr Harnick is very interested in them. I suggest to him that he take up legislative counsel's invitation to pursue these matters, because we are, after all, lawmakers.

But, for example, on the question of a, b and c or i, ii, iii, it is just that this is the form we have, and I do not think this committee is charged with investigating that. If this committee wants to get involved in a long discussion about whether we are going to have substantive amendments to this bill—

**Ms S. Murdock:** I will remind him of that, Mr Sorbara.

**Mr Sorbara:** I am always ready to discuss substantive amendments, and you know our party's position. We are looking for some changes to certain sections of this bill and we are trying to create a period of time for the government to let us know one way or the other whether it is going to be open to that. I have not heard anything from the parliamentary assistant or from any members of the government of this committee as to whether the principles of this bill and the particulars of this bill are going to be changed at all.

With all due respect to Mr Harnick and Ms Murdock and Mr Wessenger, an active debate on the words "of them" is interesting, but it does not get to the heart of the bill and it does not deal with some of the legal rights that are in it. We are here to discuss the legal rights of people affected by this, and we are trying to make a point. The only way we can is to harass the government a little bit with rather insignificant speeches from myself and others in the opposition. But maybe the government will get the point that it is not a question of whether "of them" is in the bill; it is a question of whether people's legal rights are appropriately dealt with by this committee.

So I am not going to support the amendment to delete "of them."

**Mr Winninger:** While I realize that Mr Sorbara will avail himself of any opportunity to try to embarrass the government, even where it will stand in the way of making the language of this clearer, I can support Mr Harnick. I know the Chair will tell me if I am out of order here, but certainly the words, "to the other of them" after the phrase "on notice" seemed extraneous. I am just going by memory here, but it seems to me that a hundred times or maybe a thousand times I have seen these words "on notice" and there is no magic to them. Notice is presumed to be taken on the appropriate parties, and it could be any one or more of the parties listed here.

So I would suggest, on reconsideration—and I might be opposed by people even on my side—that the matter be stood down, that legislative counsel look at this section again and see whether the words "to the other of them" are really necessary for this section.

**Mr Sorbara:** Agreed.

**Mr Harnick:** I had originally said that and we had some dialogue. I agree with Mr Winninger and I agree with that suggestion.

But just to reply to Mr Sorbara, it is quite evident in what Mr Sorbara says that he has not spent a great deal of time standing before judges attempting to interpret words. The easier we can make the words—and I have the greatest of respect for legislative counsel, who knows far more about this than I do—the easier it is to interpret these words, the less contentious litigation we are apt to have. I think Mr Sorbara, by making the statements he has made, only indicates how little experience he has had in arguing these kinds of matters before courts. The precision with which we draft this document is certainly a very important element of what we are doing, and in addition to the substance, this has a great deal to do with the amount of litigation that will be born out of the statute.

**Mr Sorbara:** Mr Chairman, I think I am next on the speaker's list.

**The Vice-Chair:** Excuse me. We do have a standing-down motion now. I need unanimous consent to reconsider the standing-down motion.

**Mr Sorbara:** I am not prepared to grant consent until I have dealt with Mr Harnick's little—

Interjections.

**Mr Sorbara:** No, I do not think, Mr Chairman, that my experience—

**Ms S. Murdock:** You do not think; that is right.

**Mr Sorbara:** Now Ms Murdock is attacking. I do not know why I am the subject of attack here.

**Ms S. Murdock:** You said it. I did not say it.

**Mr Harnick:** The remarks I made were made with the greatest of respect to Mr Sorbara. I did not intend to imply otherwise.

**The Vice-Chair:** Order. Mr Harnick, Hansard would appreciate it if one person at a time spoke.

**Mr Sorbara:** And so would the speaker who is speaking.

Now, I do not know why, Mr Chairman, the member for Willowdale began a personal attack on me.

**Mr Harnick:** It was certainly not intended and I will withdraw my remarks. There you go.

**Mr Sorbara:** Mr Chairman, we are getting closer to the point now. I do not know why the remarks that have now been withdrawn by the member for Willowdale—he was pointing out my lack of experience in a courtroom. He is right. I only practised law for some two years before being elected to the Legislature of the province of Ontario in 1985, and immediately after that was appointed to cabinet and thereafter could not practise law. During my period of practice—I would not mind getting into it in detail if the committee so wishes—I had very little experience in a courtroom. I did do a little work on statutory interpretation and have, I should tell my friend the member for Willowdale, spent five and a half years as Chairman of the regulations committee of cabinet where I reviewed the work of legislative counsel in exhaustive ways, looking at hundreds and hundreds and hundreds of regulations. It is on that basis that I say to you and to the other members of the committee that this province is served by an outstanding team of lawyers and legislative draftspeople, and the product that they bring to the government and to ministries and through government and ministries to the Legislature is first-rate.

I do not mind if this committee wants to get into a long discussion about whether to strike out the words "to the other of them." It serves my purposes. You might notice that I am using some rather crude delaying tactics here in this committee. I am giving long speeches where short speeches would do the work. I am doing that because I would like the government committee members here to try to understand that we could make certain minor improvements to this bill which would make it a better piece of legislation. If the government is not willing to do that and the members of this committee are not willing to do that, then we oppose in the only way we can oppose, and that is by doing what politicians do too much of, and that is talking. We do not have any other tools.

Remember Peter Kormos? For 17 hours in the Legislature he talked, and he became a hero. I am told, as a matter of fact, that at the recent convention of the New Democratic Party he received an ovation louder even than that of the Premier.

1720

**The Vice-Chair:** Stay on the issue.

**Mr Perruzza:** You mean you were not there?

**Mr Sorbara:** My friend from Downsview asked whether I was there. No, I was not there, but we had people there as observers. They paid the fee and we observed carefully, as you will do at our conventions when we return to the government part of the House four and a half years from now.

**Mr Perruzza:** Maybe you will invite me and I will attend.

**Mr Sorbara:** Excuse me, I am speaking to the motion.

**The Vice-Chair:** Mr Sorbara, please stay on the motion.



**Mr Sorbara:** I am speaking to the motion, Mr Chairman. I think I am, in any event. We are talking about subsection 12 and we are talking about the tools we have available to us to try and convince the government to consider the changes we would make to this bill. Ultimately you are going to get the bill in the fashion you want. Pretty soon the government will get to the sections of substance of this bill, the ones that actually affect the rights of men and women and children who are affected by this legislation.

I have been dealing with this bill in this committee for a good, long time, and no one from the government, nor from the bureaucracy—I will get to that in a second—nor from the government members of this committee, nor the Chairman has come to us, me or any of my colleagues and said, “Can we just talk about what you would like to do on this bill a little further, sit down and discuss it with you outside the formal nature of this committee? Do you want to do that, Sorbara? Do you want to sit down and tell us what the concerns are?” Howard Hampton has not done it. He has been the Attorney General now for some five months. He did have a little meeting with Ian Scott, I will grant him that. Generally, as a courtesy, ministers, once they are appointed, sit down with the critics and say, “Look, I have just been appointed and we would like to know where your party is coming from.” I have not heard from Howard. I have not heard from the parliamentary assistant on this bill, sitting down over a cup of coffee about what concerns we have.

They have read our amendments, maybe, but nothing, just: “We are going ahead with this bill. This is what the bureaucrats want, this is what you are going to get.” So, if the government members of this committee want to stand down a consideration of whether to strike out “to the other of them” in the face of good drafting from legislative counsel, I have changed my mind, Mr Chairman. I am willing and we are willing to grant unanimous consent to stand it down, and I just wanted to let you know that.

I want to move a brief adjournment so my friend from Prescott and Russell can go outside and indulge a habit that I used to really love.

**The Vice-Chair:** We adjourn until 5:30.

The committee recessed at 1725.

1733

**The Vice-Chair:** I would like to call this committee to order for consideration of 18a. Any more questions on 18a?

**Mr Sorbara:** Help us out here. My understanding was that there was a request by Mr Wessinger to stand the matter down for further consideration.

**Mr Winninger:** You are confusing certain people.

**Mr Sorbara:** Well, there are so many new people in the Legislature.

**The Vice-Chair:** Mr Sorbara, that has already been defeated.

**Mr Sorbara:** But there was a further request from Mr Winninger, the member for London South, the one who got that little private member’s bill upgraded to a government bill on the quick.

**Mr Winninger:** Passed.

**Mr Sorbara:** Upgraded and passed on the quick, despite the fact that it violated every word of parliamentary procedure that I have ever—

**The Vice-Chair:** Excuse me, Mr Sorbara. I have to ask for unanimous consent in order for you to ask to stand this down again, because the standing down motion has been defeated twice already.

**Mr Sorbara:** I am going to defer to the clerk.

**Mr Winninger:** I am withdrawing my motion.

**The Vice-Chair:** Yes, Mr Winninger. Thank you very much.

**Mr Sorbara:** Then I want to know what the status of these poor little words “to the other of them” is.

**The Vice-Chair:** “Of them” has been struck out.

**Mr Sorbara:** So it is just two little words. I have got two little words for you, Mr Chairman.

**The Vice-Chair:** Please.

**Mr Sorbara:** So “of them” is out. Those are the two little words I was referring to.

**The Vice-Chair:** Yes, “of them” is out.

**Mr Sorbara:** Okay. That is to say the amendment before us does not contain the words “of them.” At least not in the third line of subsection 12.

**The Vice-Chair:** That is correct, Mr Sorbara.

**Mr Sorbara:** I think that is regrettable, but so be it.

**The Vice-Chair:** Any further comments or questions on 18a? Shall 18a carry?

**Mr Sorbara:** Mr Chairman, this is Mr Carr’s motion still—I am sorry, it is a government motion now.

**The Vice-Chair:** Yes, Mr Sorbara.

**Mr Sorbara:** Could we just have it on the record—after all, some people might read this—that although the government takes credit for this motion this is really the work of Mr Carr, a newly elected member with not a great deal of experience in the House. But he has worked on it and he has convinced the government members—

**The Vice-Chair:** Ms Murdock?

**Mr Sorbara:** —and the government—

**The Vice-Chair:** Ms Murdock, please?

**Ms S. Murdock:** Actually—

Interjection.

**Ms S. Murdock:** I have the floor. Just for clarification, Mr Sorbara, since Mr Wessinger is going to say it, he stated right at the beginning that this was because of a Conservative amendment that this amendment was even brought forward.

**The Vice-Chair:** Thank you very much, Ms Murdock.

**Mr Sorbara:** I appreciate Ms Murdock’s help on that matter, because that had slipped my mind. But the thing that disturbs me, to tell you the truth, Ms Murdock, is that I expect all of you will vote for this. I have a terrible suspicion that—

**Mr Perruzza:** On a point of order, Mr Chairman: If Mr Sorbara wants to speak to the issue at hand or he wants to applaud Mr Carr on his amendment or he wants to move in

on Conservative turf out in the community, that is one thing. He should do it on his time and at his leisure, and he should not be taking up the time of this committee to do that. If he wants to stick to the issue at hand then that is fine and—

**The Vice-Chair:** Mr Perruzza, actually you do not have a point of order. Mr Sorbara is speaking to the issue. Thank you.

**Mr Sorbara:** Thank you, Mr Chairman. The point I was trying to make before my friend from Downsview interrupted was that I have a sneaking suspicion that all of the government members are going to support this motion. I also have a sneaking suspicion that had Mr Wessenger, as the parliamentary assistant, not indicated his support for it the government members would have been unanimous in their rejection of this amendment. I am disappointed in that, Mr Chairman. I have had an opportunity to look at the amendment and I think Mr Carr is right. Just a second, I am about to finish. I think Mr Carr is right in proposing these matters and I am glad he brought it to the attention of the committee. I am glad the government members are going to vote for it although I would suggest to them that it is not only Mr Wessenger as the parliamentary assistant—

**The Vice-Chair:** Can I please talk for one moment? You are imputing motives, which is contrary to the standing orders.

**Mr Sorbara:** Imputing motives? If I have done that, Mr Chairman, I want to apologize to the members of the committee. I expect that they are going to vote for it. I hope and pray that they vote for it. I just encourage them as Mr Carr brings forward motions that are not supported by Mr Wessenger and the government; or motions brought forward by myself on behalf of my party, that they at least consider it, that they do not simply vote based on directions from Mr Wessenger, or the Attorney General or the bureaucracy. We have some serious concerns with some sections down the road and if I could ever get some indication from the government, whether through the parliamentary assistant or the Attorney General, if he ever calls the critics—Charles, have you ever been called by the Attorney General?

Interjections.

**Mr Sorbara:** I guess that is not relevant. I was wondering out loud.

**The Vice-Chair:** Mr Sorbara—

**Mr Sorbara:** In any event, I was going to let you know that we are prepared to support this.

**The Vice-Chair:** Thank you very much, Mr Sorbara. Are there any further questions on page 18a? Seeing none, will 18a carry? Those in favour? Opposed?

Motion agreed to.

**Mr Perruzza:** Mr Chairman, I believe that was unanimous?

**The Vice-Chair:** Yes it was, Mr Perruzza.

**Mr Sorbara:** Do you want a recorded vote?

**The Vice-Chair:** Shall page 18 carry? All in favour? Opposed? Carried.

Motion agreed to.

**Mr Perruzza:** All of that was unanimous, Mr Chairman. 1740

**Mr Wessenger:** Mr Sorbara had some concern about section 1, and I believe he would like to clarify with respect to that. We stood down section 1, so I would like to just return to that in a moment.

**Mr Sorbara:** I wanted to advise you—

**The Vice-Chair:** Mr Sorbara, one moment please. The only way that we can move back to section 1 is with unanimous consent. Do we have it?

**Mr Harnick:** Hold on a second. You are way ahead of me. You may have unanimous consent, but I would like to know what it is you are seeking unanimous consent for.

**The Vice-Chair:** To move back to section 1 so Mr Wessenger can clarify something for Mr Sorbara.

**Mr Wessenger:** No, I think Mr Sorbara had some concerns about section 1.

**Mr Sorbara:** Mr Chairman, perhaps I can just help you for a moment and tell my friends that after consideration of the matter my friend from Prescott and Russell raised, we stood down final consideration of section 1 because I had some substantive concerns about drafting. I have resolved those concerns with legislative counsel and the members of the ministry and no longer have those concerns. So if the committee wishes by unanimous consent it can return to section 1 and we can dispense with it. We do not have to deal with it any more. We are taking one small step forward on the bill. Section 1 of the bill as printed.

**The Vice-Chair:** Is there unanimous consent to move back to section 1?

Agreed to.

Section/article 1:

**Mr Sorbara:** On the subject of section 1, I would point out to members of the committee I did have some concern about whether or not the definition of "support deduction order" as drafted could be challenged in a court because it refers to the requirement to have an income source. I am satisfied now, having talked with legislative counsel, that the definition is secure and a support deduction order that is issued in blank, that is to say, without any name of an income source, will not be charged successfully as a nullity in court, notwithstanding the fact that the definition of "support deduction order" makes reference to "any income source."

I have had that discussion, I am satisfied with it, and so I am prepared that the section proceed and we are going to support it.

**The Vice-Chair:** Thank you very much, Mr Sorbara. Shall section 1, as amended, carry? All those in favour? All those opposed? Seeing none, carried.

Section 1, as amended, agreed to.

Article 1, modifié, est adopté.

**The Vice-Chair:** Now I would ask the clerk to speak on a clarification of the motions.

**Clerk of the Committee:** The next motion that we are going to is 26, and although your yellow pages have a 25a and a 25b those have been renumbered 26a and 26b.



**Mr Sorbara:** Mr Chairman, I must confess to a little bit of confusion at this point: 26 is a motion moved by me and the clerk just suggested to me that there is a yellow version of that?

**Clerk of the Committee:** No, if I can just clarify. What is on the floor right now is the motion on pages 24 and 25. There are numerous amendments to that amendment. The first amendment that we will be dealing with is Mr Sorbara's amendment on page 26. When we finish with that we will then go to the amendment on 26a, the amendment on 26b, the amendment on 27, the amendment on 28, the amendment on 29. Then we will go back and pass 24 and 25, amended or not amended.

**The Vice-Chair:** Are there any comments or questions to Mr Sorbara's amendment 26?

**Mr Sorbara:** Mr Chairman, I should perhaps begin speaking to that. It may well be, Mr Chairman, it being a quarter to six, that the members of the committee want to defer consideration of this matter, because this really does get to the heart of our concerns with the bill. Looking around the room, I do not see any enthusiasm from the government members to set this matter over to our next day of considerations so I will just go ahead. You do not even have to ask for unanimous consideration. I will just go ahead.

If the members of the committee will just direct their attention to page 26, as we were referring to it, the amendment that we are proposing says, "it finds that there is, having regard to all of the circumstances, a substantial reason for suspending its operation." If you just read that, you will probably think, "What in the world is he talking about?" So let me put that amendment into some context which speaks to our specific concerns about this bill. In order to do that, Mr Chairman, I am afraid I will have to go into a little bit of history.

The previous government, under the direction of the member for St George-St David, who was then Attorney General, undertook substantial work trying to figure out how to improve the operation of the support and custody enforcement branch of the Ministry of the Attorney General.

The problems there were problems that were familiar to virtually every member of the Legislature who paid any attention to his or her constituency office—and I remind my friend from Sudbury that she was once a constituency assistant so she knows very well about the kind of problems in the office.

So what happened? Ian Scott, as Attorney General, undertook some work to figure out how the enforcement of support orders could be improved, and I think his ministry did what any competent ministry should do: It looked around to various jurisdictions not only in North America but around the world to see what other jurisdictions were doing.

Lo and behold, the Ministry of the Attorney General found that many jurisdictions were moving towards a system of automatically deducting from the paycheque of individuals who were the subject of a support order the amount owing on the support order.

The evidence, if you can believe the then Attorney General, was fairly clear that this was pretty strong medicine but it was a trend in jurisdictions similar to Ontario and ought to be considered by the province of Ontario. So the then Attorney General had some work done to determine how such a measure might be incorporated into the laws of the province of Ontario.

I made that point when Howard Hampton introduced the bill. I wish, when he introduced the bill, he had talked less about child poverty and at least mentioned the fact that the initial work on this bill had been done by the previous government and the previous Attorney General.

In any event, Mr Scott's version of this bill had a number of opportunities for the branch to be relieved of the responsibility of collecting this money.

What does that mean? It means that in Mr Scott's view of improvements to the bill, there should be room, he thought, for people to free themselves from the enforcement function of the government. So he proposed that there be what we were calling a kick-out provision.

Once the office was satisfied that payments were being made regularly—in our view a year would be a good amount of time—there would be no necessity for the branch to continue to enforce these orders, so a support deduction order would not be necessary, that is to say, the continuing enforcement of a support deduction order would not be necessary. It would not have to be done by this branch.

1750

Then we had an election. We thought we were going to win the election but we lost, and the New Democratic Party was called upon to form the government under the leadership of the now-Premier Bob Rae. He appointed Howard Hampton as the Attorney General. Howard Hampton took up the responsibility of doing the business that was ongoing in the Ministry of the Attorney General and the first file he picked up, lo and behold, was SCOE. Do you know what that means in practical terms? The folks in the Ministry of the Attorney General brought this matter to the new Attorney General's attention, suggested that most of the work was done and that the new government could proceed fairly quickly with the bill to be introduced into the Legislature amending the enforcement of support and custody orders in the province of Ontario.

I guess the matter was reviewed by cabinet. The tough questions were considered by cabinet, and it appears that cabinet decided to make it far more difficult than our government had considered appropriate, far more difficult for people to resolve the matters of support between themselves rather than using the office of the Ministry of the Attorney General.

The amendment that we are proposing would change that slightly. It would in fact allow a court to determine, at the consideration of the matter, that the force of the office would not be necessary under certain circumstances. Have a look at it: It says simply that under appropriate circumstances, "having regard to all of the circumstances," there is a substantial reason for suspending the operation of a support deduction order.

As the section reads now, the government is proposing to make it almost impossible for two parties to go beyond the enforcement by the director and his or her office. We are probably going to get into that in more detail the next time we consider this matter, but as the section stands now it reads as follows: "The court may suspend a support deduction order under subsection (1) or subsection 3k(6) only if"—now here is the operative section—" (a) it finds that it would be unconscionable, having regard to all of the circumstances, to require the payor to make support payments through a support deduction order."

Now, that is a very strong test. The test of unconscionability is one that, I think, the lawyers on this committee will agree is very difficult to meet. In fact, it gets even more difficult if you look at subsection 3 because subsection 3 tells the courts of certain things that might, under normal circumstances, be considered in considering unconscionability but they cannot be looked at by the courts, like the record of payment so far. The court is not allowed under their amendments to look at that.

What is left? I say, if you are going to take out those things, then get rid of the section altogether. Do not create a charade that you will be able to establish unconscionability before a judge in a family court in the province of Ontario. In fact, the government does a highly unusual thing in saying not what the court might look at it when it considers unconscionability but what it cannot look at, without any statutory direction at all about what it might look at. Now that is really rather silly. That is rather bizarre that it would say you cannot look at "the payor's payment history in respect of his or her debts, including support obligations." You are not allowed to look at that.

A payor might be able to bring before a court evidence that he or she has always paid the bills, always paid a support order, always paid the American Express on time, has a perfect credit rating, but when the court looks at unconscionability it is not allowed to look at that, if the government has its way.

The court is not going to be able to look at "the fact that the payor has had no opportunity to demonstrate voluntary compliance in respect of support obligations." A payor might come before the court and say, "Give me an opportunity to prove that I will never default." The court cannot look at that in considering unconscionability.

If the payor wanted to bring witness after witness after witness about his desire to pay on time, even to voluntarily

have the payments deducted from his pay, the court cannot look at that. It says, "The following shall not be considered by a court in determining whether it would be unconscionable."

What are we saying about our citizens? There are lawyers here; the lawyers on this committee should think about the presumption of innocence that is at the very foundation of the common-law system and the criminal-law system, the presumption of innocence, the presumption of goodwill. I would like to hear from Mr Winninger about that and I would like to hear from the parliamentary assistant to the Attorney General about the presumption of innocence and what this section on unconscionability says about that presumption of innocence which is the foundation of our law.

The court, when it is considering unconscionability, cannot look at "the fact that the parties have agreed to the suspension of the support deduction order." I tell my friends in the government party to read that section carefully. Two spouses who are separated, but who have come to a voluntary agreement that they do not need the enforcement of a support deduction order in order to make sure that money is paid on time, even if they agree that it is not necessary—the court cannot look at it.

What are we saying about the people we are elected to govern? Talk about intellectual totalitarianism; talk about the fact that even if the parties agree—how many people on this committee have gone through a separation or a divorce? If statistics prove right, probably about half, so those of you who have, or those of you who might, understand the pain and the agony and the acrimony and the bitterness. Yet, even having known that, there is room to come to an agreement on some things like, "By God, we are not going to fight over the stereo and we are not going to fight over the kids," and litigants can agree about that. And yet we are saying in this government bill that even if they agree they do not need the support deduction order, the court cannot look at it. Ask yourself whether you want to be the sponsors of that particular bit of business.

Mr Chairman, in view of the fact that it is now, as the Speaker says, six of the clock, I move adjournment of the debate. Is that what I do?

**The Chair:** Yes. All in favour of adjourning? All opposed? Seeing none, carried. We are adjourned till 25 March after routine proceedings. Thank you very much.

The committee adjourned at 1759.



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## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

**Chair:** White, Drummond (Durham Centre NDP)  
**Vice-Chair:** Morrow, Mark (Wentworth East NDP)  
 Carr, Gary (Oakville South PC)  
 Chiarelli, Robert (Ottawa West L)  
 Fletcher, Derek (Guelph NDP)  
 Harnick, Charles (Willowdale PC)  
 Mathysen, Irene (Middlesex NDP)  
 Mills, Gordon (Durham East NDP)  
 Poirier, Jean (Prescott and Russell L)  
 Sorbara, Gregory S. (York Centre L)  
 Wilson, Fred (Frontenac-Addington NDP)  
 Winninger, David (London South NDP)

**Substitutions:**

Perruzza, Anthony (Downsview NDP) for Mr Chiarelli  
 Murdock, Sharon (Sudbury NDP) for Mr White  
 Wessenger, Paul (Simcoe Centre NDP) for Mr F. Wilson

**Clerk:** Freedman, Lisa

**Staff:**

Revell, Donald, Legislative Counsel  
 Roux, Denis, Legal Advisor, Legislative Counsel



J-13 1991

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First Session, 35th Parliament

## Official Report of Debates (Hansard)

Monday 25 March 1991

### Standing committee on administration of justice

Child and Family Support  
Statute Law Amendment Act, 1990

## Assemblée législative de l'Ontario

Première session, 35<sup>e</sup> législature

## Journal des débats (Hansard)

Le lundi 25 mars 1991

### Comité permanent de l'administration de la justice

Loi de 1990 modifiant les lois  
relatives aux obligations  
alimentaires

Chair: Drummond White  
Clerk: Lisa Freedman

Président : Drummond White  
Greffier : Lisa Freedman

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday 25 March 1991

The committee met at 1543 in room 228.

### CHILD AND FAMILY SUPPORT STATUTE LAW AMENDMENT ACT, 1990 LOI DE 1990 MODIFIANT LES LOIS RELATIVES AUX OBLIGATIONS ALIMENTAIRES

Resuming consideration of Bill 17, An Act to amend the Law related to the Enforcement of Support and Custody Orders

Reprise de l'étude du projet de loi 17, Loi portant modification des lois relatives à l'exécution d'ordonnances alimentaires et de garde d'enfants.

Section/article 3:

**The Chair:** Okay, I call the meeting to order. We will be dealing with page 15(a) of amendments to Bill 17. I would suggest that we look at this one, and if there are other non-contentious issues, we can deal with those and then adjourn for a very brief time until we have representatives from the official opposition.

**Mr Wessenger:** I would like to accept a friendly amendment with respect to page 15(a).

**The Chair:** Mr Wessenger moves that subsection 3c(10d) of the act, as set out in section 3 of the bill, as amended by Mr Wessenger's motion of 27 February 1991, be struck out and the following substituted:

"(10d) Despite any other provision of this act, no deduction shall be made under a support deduction order in respect of amounts owing to a payor as reimbursement for expenses covered by a medical, health, dental or hospital insurance contract or plan."

**Mr Harnick:** Should we not state "expenses incurred and covered by," to adopt the wording of the prior—

**Mr Wessenger:** I think we will ask legislative counsel to advise on that.

**Mr Harnick:** Just "expenses incurred and covered by," because I think the expense has to be an incurred expense before we can obtain reimbursement.

**Mr Revell:** Technically I would question whether or not you can receive reimbursement for something if you have not made a disbursement in the first place. I mean, let's face it. What happens on many of these plans is people in fact go out and incur an expense and then there is a direct payment between the insurer and the—

**Mr Harnick:** You submit your bills.

**Mr Revell:** Yes. I reviewed this at length as a result of the discussion last week and I was of the opinion that this in fact covers the whole issue, but if you would feel more comfortable with it the other way, I think that works as well. I just have to think about it for just a second.

**Mr Harnick:** "Expenses incurred and/or covered by"? Does that do it?

**Mr Revell:** And/or is not right. No.

**Ms S. Murdock:** You can incur an expense that is not necessarily covered by. For instance, you may go to your dentist and have certain work done, some of which is covered by an insurance plan. You have incurred the expense, but not all of it can be reimbursed. Therefore, I do not see the necessity of having "incurred" in there.

**Mr Revell:** I have to agree. In looking at it, it has to be, first of all, a reimbursement for an expense, and that expense has to be covered by. I cannot imagine that insurance companies are going to be paying out too much unless there is fairly valid proof of claim. There is always going to have to be supporting documentation, whether it is on a pay-direct basis or whether it is on a pay-the-client basis, who in turn pays back the doctor or whatever.

Motion agreed to.

**The Chair:** Lisa directs me to page 14—

**Mr Wessenger:** I think it was stood down.

**The Chair:** —which was stood down at the same time, was it?

**Mr Harnick:** Page 14 white or yellow?

**The Chair:** White. Pages 14 and 15, as amended, discussion?

Interjections.

**The Chair:** Lisa, could you amplify on this?

**Clerk of the Committee:** The reason we are going back to 14 is we had to reopen 14 and 15 in order to pass 15(a). So technically now we have to go back and pass—even though we carried it once, we reopened it so that we could pass 15(a). So now we are carrying 14 and 15, as amended by 15(a).

Motion agreed to.

**The Chair:** Anything further that is non-contentious?

**Mr Wessenger:** Are there any further stood down?

**Clerk of the Committee:** No.

**The Chair:** Okay. I suggest that we recess until the—  
Mr Morrow?

**Mr Morrow:** Mr Chair, I would move a motion that we keep moving on non-contentious amendments.

**Mr Harnick:** What are non-contentious amendments? I voice the words of Ms Murdock, your own member. What is contentious to one is non-contentious to another or vice versa.

**Mr Morrow:** What I am basically saying, obviously, is 24 through 29 are very contentious issues for this committee. I would ask that we move to the amendments that all three parties here feel are non-contentious.

**Mr Harnick:** I cannot say what is contentious for Mr Sorbara.



**Mr Fletcher:** Mr Sorbara should be here.

**Mr Harnick:** Well, of course he should be here, but he is standing on the television now making a speech in response to the Attorney General.

**Mr Fletcher:** Then there should be another Liberal who is standing in here too.

**Mr Harnick:** But he is carrying the ball on it.

**Mr Fletcher:** Then there should be someone taking his place.

**Mr Harnick:** I would certainly hate to be in a position where I ever had to be hoping that you would grant me an indulgence.

**The Chair:** Excuse me. I think we have an agreement that we would recess if there were not other non-contentious issues that we have agreement about that we could pass.

**Ms S. Murdock:** I would just like to point out that tomorrow, on the Constitution debates, when they are up, there are going to be a couple of us on the government side who are going to want to speak as well and it would certainly be in keeping with helping out in working together that we do reach that point. So I would be in agreement to that.

**The Chair:** I suggest that we recess until approximately 4:05.

The committee recessed at 1551.

1605

**The Chair:** I would like to call the meeting to order. We are dealing with the Liberal amendment on—sorry?

**Mr Wessenger:** Since Mr Sorbara is not here yet, I wonder if we might proceed with some other motions which I think are non-controversial.

**Interjection:** There he is.

**Mr Wessenger:** Oh, he is.

**The Chair:** If I could resume, we are now dealing with the Liberal motion which is on page 26, a Liberal amendment to Bill 17.

**Mr Sorbara:** Has this been moved yet?

**The Chair:** Yes, it has.

**Ms S. Murdock:** A clarification, right page 26?

**The Chair:** Left page 26.

**Ms S. Murdock:** Mine says government motion.

**The Chair:** Liberal motion, page 26.

**Mr Elston:** That was then, this is now.

**Ms S. Murdock:** That is what I am wondering.

**The Chair:** Okay, Mr Sorbara? Any comments? I do not want to rush you.

**Mr Sorbara:** What are we on, SCOE? You thought I was serious, did you not?

First of all, let me begin by thanking the committee for indulging me with a brief recess. I am just learning how to juggle all the balls of an opposition member, and as it turned out today, not only was I obliged to respond to the Attorney General's remarks on the report of the select committee on Ontario in Confederation but be here as well to try to defend out party's position on Bill 17.

The amendment that we are on right now is, I think, central to our party's position on Bill 17. We are dealing now with the section where we would like to see some movement from the government. I want to make that point perfectly clear. We have had interesting debate, thank you very much, on a lot of the sections, but hey, folks, we are now down to the heart and soul of it. We are right where we ask you, in the name of fairness, justice and good public administration, to set aside your blind commitment to what the Attorney General says you are supposed to do and consider an amendment or two.

What is it that we are asking you to do? We are asking you to consider an amendment to clause 3d(2)(a) as printed. The section as it stands now, or as it stands in the printed form of the bill which I wave before you, for the benefit of Hansard, reads as follows. Perhaps I better read all of subsection 3d(2). I am beginning with subsection 3d(2). It says:

"The court may suspend a support deduction order under subsection (1) or subsection 3k(6) only if"—and here is the offending section or clause—"a) it finds that it would be unconscionable, having regard to all of the circumstances, to require the payor to make support payments through a support deduction order."

What that clause says in good old English is that in almost no case at all will a judge be able to suspend a support deduction order and say to the people before him, the spouses who are about to separate: "Go in peace. Work it out yourselves. I am of the opinion, having regard to all of the circumstances, that you need not call upon the state and the Child and Family Support Office"—I am getting the name of the office right now, because some day this bill will pass and their office will be called that—"you don't need the support and the interference of the state in this matter. We are satisfied"—the court often speaks in the royal "we"—"that these matters of the payment of support can be worked out as between the two of you."

What makes it even worse is that the section as presented by the government says that the court can do that if it finds that it would be "unconscionable" not to do it. Now what the hell does "unconscionable" mean in the circumstances? We do not know. The act does not define it. The act has a number of terms that it does define, but it does not define "unconscionable." So what is going to happen? Lots of money for lawyers making lots of interesting cases after doing lots of interesting research on the question of unconscionability in family law matters. Talk about supports. Who in the heck are we trying to support here, the lawyers or the the spouse who is supposed to benefit from a support deduction order?

The act does not tell us what is or is not unconscionable. But guess what? In the amendments as presented by the government, the act tells us what unconscionability is not, and this is really something. Pay attention to this. It is the following subsection, and I am going to quote it:

"(3) The following shall not be considered by a court in determining whether it would be unconscionable to require a payor to make support payments through a support deduction order"—these are the things that the court is prohibited by statute, based on your views as legislators,

from looking at when considering unconscionability—"1. The payor's payment history in respect of his or her debts, including support obligations."

So, for example, if the person, man or woman, who is the subject of the support deduction order and is going to have his or her paycheque docked—if he has a record of always paying his debts and in fact has been the subject of other support obligations and has always paid on time, every single occasion, guess what? The court is not allowed to hear that; prohibited by statute, cannot hear about honesty. Honesty is irrelevant here, because of the amendments proposed by the government.

The second thing that the court cannot look at is, "2. The fact that the payor has had no opportunity to demonstrate voluntary compliance in respect of support obligations." In other words, a spouse who is about to be made the subject of the support order is prohibited from saying to the court, "Well, milord"—oops, we do not use "milord" any more—"Well, Your Honour, I want to be given a chance to prove to my ex-wife"—or "my ex-husband" as the case may be—"and to this court and to all my friends and neighbours and my children that I am an honest person, that I am going to pay regularly and without fault."

If you, Mr Chairman, or anyone else were to stand up in a court and make that argument if this law passed, the counsel for the other party would stand up and say: "Objection, Your Honour. Those submissions are out of order. They are prohibited by law." Gord, they are going to be prohibited by law. You will not be able to make them in front of the court.

Now what is the third thing? The third thing that the court is going to be prohibited from looking at is, "3. The fact that the parties have agreed to the suspension of the support deduction order." What does that mean? Well, the drafters did a pretty good job. This is good English. If the two parties to the separation agree that they want this support deduction order to be suspended, they want to do things without the help of the family and child support office, the judge will have to say, "I'm sorry, I'm prohibited from listening to that agreement between the two of you."

The state is getting pretty paternalistic. I thought we were finally working our way out of the paternalistic state. I thought that we were inching our way—I am sorry, centimetring our way towards a situation where we were creating a new equality between men and women in this society. This says: "I don't believe you if you agree. I don't believe you if you want to prove your honesty. I can't hear any of the things that might bear reasonably on unconscionability. Can't hear anything. Sorry. I'm prohibited by the New Democratic Party's view of your ability to be honest. They passed a bill that said it would be unconscionable for me to listen to your debt history or your agreement or your desire to prove that you are an honest person."

That only tells us what the judge cannot listen to when considering unconscionability; there are no words in the statute about what the judge might want to consider. So where does that leave us with clause 3d(2)(a), which says that if it is unconscionable, you can relieve yourself of SCOE and go about it on your own? What it basically says is that nobody is getting out, subject of course to clause

(b), and I will talk about that in a few minutes. The amendment that we have proposed is not draconian, I say to my friends, particularly my friend the member for Durham East, who is always reasonable on these matters and who is now well rested.

**Mr Elston:** Don't exaggerate.

**Mr Sorbara:** I am exaggerating. I am sorry. My colleague reprimands me appropriately. I was just thinking that he did spend a little bit of time down in Dunedin reviewing the fortunes of this city's baseball team, so he cannot be all bad.

Our amendment is pretty simple and straightforward. It actually is a reasonable amendment. It is in no way unconscionable. This is not an unconscionable amendment. This is straightforward and simple. We suggest that we chuck the concept of unconscionability, which is entirely unworkable for the court, and put in something more straightforward, and I am going to quote it now. We suggest that clause (a) read as follows: "It finds that there is, having regard to all of the circumstances, a substantial reason for suspending its operation." In other words, if the judge, who after all is in the best position to decide, having heard the submissions of the parties, agrees that it is better to not use the support deduction order than to use it, he can suspend it.

Certainly that would require agreement. The spouses would have to agree, but there would be something more as well. The judge, with his or her history of listening to cases on the question of support, could exercise the kind of discretion and understanding that judges generally use and are supposed to use.

**Mr Elston:** Keep it up, Greg. I think they are weakening.

**Mr Sorbara:** Well, if they start to see reason on this, I am ready to stop and pass the rest of this bill at the drop of an amendment or, to be more precise, the adoption of an amendment.

Let me just say one other thing about clause (a) and why this is a more reasonable approach. I am sorry that the legislative counsel has left us for a few moments, because this is a matter that I will need his views on, so maybe I will just wait for those remarks until he returns. I wonder if the clerk might help out in that regard.

We will be proposing—oh, my goodness, I do not see it here. We could propose, if the amendment had been drafted, some changes to clause 3d(2)(b), which is the exception allowing people to relieve themselves from support deduction orders upon the posting of security.

**The Chair:** Mr Sorbara, legislative counsel has returned.

**Mr Sorbara:** I have a lot to say and I know that my colleague Mr Elston has a lot to say on the question of security, but inasmuch as legislative counsel has returned, it is time now for me to just express my concerns about some grave inconsistencies in the act. I ask the indulgence of my colleagues in the New Democratic Party because this is fairly technical stuff, but all of you now have been elected for six months or so, so you are ready for this rather heady clause-by-clause kind of stuff.



1620

I want to take my friends to subsection 3(6) of the bill as printed. Are you all there? Are you all with me on this clause? Subsection 3(6) was referred to in the side notes as the "prompt filing" section. I have a little note on my own copy which refers to it as the opt-out clause. Just let me read this section through with members.

**Mr Fletcher:** On a point of order, Mr Chair: Are we discussing one section or are we discussing the whole thing? I thought it was clause 3d(2)(a) of the bill as printed. I thought that was what we were discussing.

**Mr Elston:** This bill is very intricately interrelated. Obviously, this has some play.

**The Chair:** Mr Sorbara, could you point out how this particular point refers to your motion?

**Mr Sorbara:** What I will be doing in my arguments is showing that under the clause which we are discussing and which is the subject of the amendment, it is very difficult to extricate yourself from a support deduction order—a support deduction order, I repeat. But under the subsection that I just referred to, it is far easier to extricate yourself from the support order, which is the foundation document upon which a support deduction order is based.

**The Chair:** Your discussion then of this other section is not relevant to the support deduction order?

**Mr Sorbara:** It is entirely relevant because I am proposing an amendment.

**The Chair:** I suggest that you return to the conscionability issue.

**Mr Elston:** That's unconscionable.

**Mr Sorbara:** I defer to legislative counsel on these matters, and the clerk. In trying to describe an amendment, surely I have the right to refer to other subsections and clauses of the bill.

**The Chair:** You are referring to another matter. You are referring to the support order, not the support deduction order and the issue of conscionability.

**Mr Harnick:** All part of the same bill.

**The Chair:** I would ask you to return, as you so eloquently do, to your own motion.

**Mr Sorbara:** Mr Chairman, in discussing my motion I am referring you now to subsection 3(6), which reads as follows: "The clerk or registrar of the court that makes an order described in subsection (5)"—that is, the support order—"shall file it with the director's office promptly after it is signed"—now these are the important words—"unless the person entitled to receive support files with the court and the director's office a written notice signed by the person stating that he or she does not want the order enforced by the director."

Do my friends understand what that section means? That section means that if the court has issued a support order and the person who is to benefit from the support order says, "I don't want the support order enforced by SCOE," he or she simply needs to sign a document, send it to the director and file it with the court and he or she does not come under the power of SCOE, except that it does not

apply in the case of a support deduction order. Even if you sign that order and say, "I don't want your help," under this bill the court still has to issue a support deduction order and still has to enforce it with a deduction from pay. Does that make any sense?

**Mr Fletcher:** Yes.

**Mr Sorbara:** It does?

**Mr Sorbara:** Surely to God that does not make any sense. If I go to the court and I say: "Thank you very much, milord, for the support order. I would prefer to have this enforced directly, without the interference of the law or the director's office," even under those circumstances the court is bound by this act, as a result of section 3a, to issue a support deduction order, send it to the director's office and have the director enforce it. That does not make sense, and the reason why I asked legislative counsel to be here is to determine whether that is actually what he meant in drafting this bill.

It seems to me to be entirely inconsistent with reason and good sense. If the person who is the beneficiary of the support order signs a document which says, "I do not want this support order registered with the director of the Child and Family Support Office, thank you very much," and files that document with the director and files it with the court—it has to be written, it has to be signed, presumably witnessed, probably should be in the form of an affidavit—even having done that, section 3a says the court cannot even consider that, must issue a support deduction order if there are periodic payments made at regular intervals and file that support deduction order with the Child and Family Support Office. And the director, unless it is unconscionable, must start the deductions within 14 days. I cannot figure that out.

If the woman or the man says, "I don't want the director interfering with this support order," why in heaven's name would you write a bill that says, "We're going to do it anyway"? At least get rid of this section that says you can get out of it. Take this out and say, "Except in the case of a support deduction order," because it does not make sense. After all, think of it in your own circumstances.

If the law tells you, any of you—are you awake there?—that you can go to the court and relieve yourself of the interference of the state, and the law says you can do that but in another section it says: "No, we were just kidding. If your spouse is getting periodic payments paid at regular intervals, we're going to issue a support deduction order and we're going to require that payments start being deducted," I think the lawyers who read this are going to say: "Hold on a second. Did you really mean that? Are you going to have men or women filing notices that they do not want the director to interfere and then, nevertheless, issue a support deduction order and the only way that you can get out of it is by way of the unconscionability section?" Give me a break. We will look like fools if we pass this.

That is why I have got this amendment here. This amendment says if it is reasonable, in the view of the judge, to let you out of the support deduction order, then you can get out of it, you can suspend it; Not that it is not written, because the act says it is always going to be written.

The question is whether or not its operation is going to be suspended. That is all I am asking. I am asking for some consistency.

If you folks, with legislative counsel, want a better way to draft it, that is fine with me. I am not wedded to these words, there is no magic to them. All I am saying is let's be consistent. If in one section we tell people that they can file a notice and not have your support deduction order filed with this person here who is the director, but then in another section you say, "We're still going to garnish your pay," it does not make sense. Who the hell is running the ship? Who is directing the ship here? We have got this ship going in two different directions.

On the one hand we say, "You can get out," and on the other hand we say: "I've caught you. You're in and you've got to prove unconscionability to get out." By the way, do not look at my honesty when it comes to unconscionability and do not look at my bona fides—that means my good-will—and do not look at the agreement that I have made with my friend who I am divorcing. Some people divorce as friends, believe it or not. They agree that they do not want to live their lives together, they actually can do it—not many, but they can do it—amicably and they can say to the state and the court, "You know, we really have worked this thing out." Maybe that is 2% of the cases, and that is a minority, but you know what? The humanity of a government is based on how it treats its minorities, no matter who they are, not how it treats the majority; not on how draconian it can be, but how it treats the minority. Gandhi said it and every great leader has said it, how you treat your minorities, how you treat the few exceptions.

The few exceptions might be able to come to an agreement. You are telling the court that it cannot even listen to that. That is stupid. It is not only draconian, it is stupid, and it is stupid to say that you have to prove unconscionability to have a support deduction order suspended, but you can just sign the notice and have the whole support order not filed with the court, with the director. So the director is going to have support deduction orders filed and not have the very support order upon which it is based filed because the person said, "Sorry, I don't want it."

1630

Somebody, for God's sake, Mr Chair, the clerk, legislative counsel, any of the NDP members, any of the Tory members, any of my old members, anyone from the audience, please, someone explain to me, tell me that this makes sense and I will withdraw my objection, I will withdraw the amendment. I will give no more speeches on this bill, I will pack up my papers and go home. But I want to be convinced that these crazy dichotomies in this act make sense, please.

**Mr Mills:** If we could believe that, we would do that.

**The Chair:** Any further discussion?

**Mr Carr:** I am just going to speak very simply. I think some of the words that the mover used, like "reasonable," seem to come to mind, and I think that essentially when you look at this, what he is saying—said more eloquently, probably, than I could—I would agree with their motion

and I think everything that he outlined here states it very clearly. So I will be supporting the motion.

**The Chair:** Okay, any further discussion?

**Mr Sorbara:** Now that I have finished my speech, I have a question or two to ask: To the parliamentary assistant of the Attorney General, am I correct in my understanding that these two sections are supposed to stand together so that petitioners before the court who are beneficiaries of support orders can relieve themselves of the interference of the director under subsection 6 as it appears on page 3, and yet at the same time cannot relieve themselves of the effect of the support deduction order?

**Mr Wessinger:** Yes, the whole concept here is to ensure that basically the support deduction order is universally applied to the largest extent possible, and that is the intent.

**Mr Elston:** Universally to the largest extent? Could you clarify that?

**Mr Wessinger:** Universal application with limited exceptions, perhaps we should say. That is the basic premise on which the bill has been established, to make the support deduction universally acceptable.

It is true that the bill also provides that the support order itself does not have to be filed or enforced, because a support order, first of all, could contain provision with respect to custody, which I understand is an obligation under the act, to enforce the custody provisions, and the party can elect not to have the branch do that enforcement.

In addition, there is a situation where the support order could be enforced by other means, other than support deduction, and the party is again allowed to opt out of those aspects. For instance, the party might elect to enforce on his or her own. They might be of the opinion that they could have that option to enforce on their own rather than through the branch, the other means, other than support deduction.

**Mr Sorbara:** Just again then to the parliamentary assistant, do you not think it is going to be a rather odd circumstance when a support order that provides for periodic payments at regular intervals is made by the court and then, before the court, the person who is the beneficiary of the support order files a notice "that he or she"—and I am quoting the act—"does not want the order enforced by the director," files that notice under subsection 6, and then is subsequently made aware that a support deduction order has been made and filed and is enforced?

**Mr Wessinger:** I am certain that person would be aware of the law and advised by his or her counsel as to the consequences of a support order being made by the court.

**Mr Sorbara:** Well, what does that person do then who is the beneficiary of that order who wants to take the real benefit of subsection 6, and that is that he or she does not want the order enforced by the director?

**Mr Wessinger:** If it is the intent of that party that he or she does not want a support deduction order enforced, then he or she has to go under the provisions of the exception with respect to the agreement of the parties and the posting of security.



**Mr Sorbara:** Or the section on unconscionability. I think that is foolish beyond belief. Do you not think at least it would have been appropriate to amend subsection 6 then, instead of fooling—this is legal fooling around, suggesting to people that they can sign a notice if they do not want the order to be “enforced by the director,” and I am quoting again.

**Mr Wessinger:** I might perhaps ask legislative counsel. I think you did indicate you wanted his opinion with respect to the clarity of the legislation.

**Mr Sorbara:** I would love to hear legislative counsel's views on this.

**Mr Revell:** Without getting into any of the policy issues, Mr Sorbara's interpretation of the law is correct. The act definitely provides that a support order may be withdrawn and it also provides that, unless an order is made under the section that is under consideration, with the amendments now on the floor, a support deduction order cannot be withdrawn.

Now the question is asked, where do you make clear the relationship between all of these provisions, and in a complicated act there are no easy answers, because you cannot put everything into one sentence. But subsection 2b provides that:

“The director shall enforce a support deduction order, subject to any suspension order or variation, until the support order to which it relates is terminated and there are no arrears owing and despite the fact that the support order to which it relates has been withdrawn from the director's office,” if it is not in the director's office.

As I say, it is a difficult situation of putting everything into one subsection. Subsection 6 would be two pages long. I think it is clear that the support deduction order operates notwithstanding any withdrawal from the director's office. As to the policy issues, I cannot speak to those.

**Mr Sorbara:** I appreciate that. I thought this policy issue was so weird, to tell you the truth, that you could file a notice and keep the support order away from the director but you could not be relieved of the effect of the subservient document. When I say subservient document, in law, it seems to me, a support deduction order is subservient to the support order. You cannot get a support deduction order if you do not have a support order. I thought it unbelievable that the Attorney General would propose that a person could get out of the director's office in respect of the principal document but not the subservient document. That is why I asked legislative counsel to comment as to whether or not I was reading this thing properly, because statutory interpretation is not my strong strong suit.

But now that he mentions 2b, I want to say to all of the members of the committee that this seems to support my argument that it is inconsistent. Yes, it does say that:

“The director shall”—I like that word “shall”—“enforce a support deduction order, subject to any suspension order or variation, until the support order to which it relates is terminated and there are no arrears owing and”—now get this—“despite the fact that the support order to

which it relates has been withdrawn from the director's office.”

Let me read that again, “despite the fact that the support order to which it relates has been withdrawn from the director's office.” But that suggests that it is there in the first place.

These guys can enforce a support deduction order even when the support order has never been filed in the director's office. So the director is without any legal ability to know the terms of the support order. She or he cannot know that. She cannot go—I was going to say “screwing around.” She cannot go off fumbling around in the court's files to find out what that support order said. She cannot know. Legally, she is prohibited from knowing, which is in the foundation document, the support order.

1640

Can you imagine that? A litigant says, “I don't want the state to know and enforce this order,” and then the state says: “Okay, that's fine. By the way, we gotcha, because we've got your support deduction order.” But this subsection 2b suggests that the order can still be enforced, even if it is withdrawn, and I say that there is a legal implication there that it was once there. I think it is crazy of you to pass a law that says you can enforce a support deduction order, a subservient order, without the principal document being filed with the director, and I plead with you to adjourn so that these folks can work out better wording.

If you insist that you will not let anyone away from a support deduction order except under unconscionability or the posting of security, that is fine. That is your political judgement. But I say that subsection 2b suggests, at least by implication, that the order was once there and is inconsistent with subsection 6 on page 3, and to that extent the bill does not make sense and should be withdrawn, or at least those sections ought to be amended.

By the way, there is an inconsistency in subsection 7 relating to 2b, which we were just discussing. But I will let legislative counsel answer whether there is not some sort of suggestion in 2b that the order was there in the first place.

**Mr Revell:** I think I have to agree with Mr Sorbara's reasoning at this point. I have just been discussing it with Ms Feldman and we would be looking at this over that particular point as to whether or not a further change is required.

**Mr Elston:** Gregory, you rescued those NDPers from themselves again.

**Mr Mills:** A knight in white armour.

**Mr Sorbara:** As I look at a television, Mr Chairman, Ernie is still speaking on the Constitution.

**The Chair:** Mr Elston, go ahead.

**Mr Elston:** Just to support Mr Sorbara's analysis about the documents, one being subservient to the other, this is akin to someone suffering a judgement which is then lodged in the sheriff's office. The sheriff's office is then asked to levy in respect of the execution filed against somebody's property. If the judgement itself is taken away, destroyed, the sheriff has nothing to act upon if the execution is requested by some interested parties.

From my point of view, it seems to me that if the initial decision no longer exists, as described by Mr Sorbara, certainly the support deduction order itself should not be allowed to exist. The sheriff would have a very hard time levying on an execution if the judgement itself was taken away. He/she would not act on it if he/she does not have a judgement on which to act.

So it is very difficult. We are not condemning anybody for overlooking this. This is a very complex bill. In fact, when the people came to see us, I think even the people from at least a couple of the legal associations had indicated that their preference would very much have been to have seen a bill which was far less complex than this one is, no question about that. This is just one of those little things that does cause us problems.

I think we ought to await the deliberations of counsel, both as advisers to the Ministry of the Attorney General's and legislative counsel, to try to straighten this thing out, because there is no point getting ourselves into a bunch of litigation, the result of which will be that somebody who is wealthy enough to fight it will fight it and some other poor people will not be able to do anything about it, although they may be just as unfairly—in fact, from my point of view, to get back to where I was a long time ago when we went through a number of the presentations, the people who were unable to go to court to determine or decipher the real meaning and the real sort of legality of this piece of legislation are going to suffer more than the folks who can afford to take their lawyer with them to clarify them as points of law.

So I think we should take a moment, because I know that the government members, although I indicated earlier that I thought they were interested in voting for us, appear anyway to have moved back from that. Their interest seems to have waned or drained from supporting this amendment, as reasonable as it is.

But on that point, I just wanted to make those observations. I do have a couple of other observations with respect to the test of reasonableness, but that will await the second part of this debate, I guess, if we find out from counsel whether or not there are some more logical changes to be made to the way the bill has been structured.

**Mr Sorbara:** Just on that very point, I think there is at least some ambiguity here. When the act says a person can sign a notice and prevent the support order from being filed with the office, but then, perhaps unbeknownst to that party, the order gets filed and support deductions get made, if I were a lawyer representing a case dealing with these sections, I would argue strenuously that the employer was without authority to deduct the amounts and pay them over because the fundamental document, the support order, had, because of the notice of the recipient, not been filed.

A circumstance like this might arise under these circumstances. The parties do not know that a support deduction order is being made, so the payor is paying directly and then funds start to get deducted, unbeknownst to him at first, so he notices it on the paycheque. I would argue that the parties relied on the subsection 6 that I was referring to and that those deductions were improperly made.

Now a court, in considering which section applies, is not able to refer to the debates that we are having in this committee. That is stuff that courts do not listen to, because most of it is the kind of stuff that you are getting from me so much of the time, but the legal argument is a very interesting one. How can a director enforce a support deduction order, which is, I say to Gord again, subservient to the overall support order, when one of the parties to the application in family court had signed a notice saying, "Do not file my support order with the director of the office of child and family support"?

If you want to take that section out of there, that is a policy decision. I can understand why you might want to do that. I disagree with that. I think that you need more flexibility. I think you need to give litigants, particularly spouses who are going through this terrible stuff, an opportunity to have more impact, within a strong legal framework, of the flexibility that characterizes a free and just society.

In other words, I want women to be able to avail themselves like that of a support deduction order if that is what they need—just like that. I want this office to be well funded, and I want the support deduction to come into force. If she says, "That is what I need," let that be the case. But if there are situations where they agree or situations where they do not need the office, let's go by way of subsection 6. Let them tell the court together and let the court look at that and say, "Yes, that's reasonable."

Know what? I am afraid that politically the government would lose a few political points from the most strident. You do not have to do that. You can support this and just say, "I'm not going to go along with those strident choruses, the ones that say that every single payment has to go through the hands of the government."

It costs money to put those payments through the government. It costs a lot less for you to send your spouse a cheque regularly than for the state to take it, probably about \$15 a cheque, by my reckoning. That is what the banks now charge to handle that kind of stuff.

I put it to you, be reasonable. Consider that you are going to expand on this and that this is a good reasonable test. This sections reads, the parties have to agree and the court thinks it is a good idea.

I certainly will agree to any recess that the government wants to consider how to improve these through other amendments, but I think my colleague Mr Elston has comments on reasonableness.

**Mr Elston:** I merely want to suggest that perhaps, at least if there is no recess to be had, this item be stood down so that we can come back to it, because I know there is some willingness for the people to work on this between legislative counsel and the adviser to the Attorney General's department. I do not think there is any point in our carrying on with the discussion if there are going to be some changes either proposed or brought forward. I take it, from what was said, that Ms Feldman and the legislative counsel are at least looking at some things that might ameliorate some of the concerns.



**Mr Wessenger:** Could I just state that if we are going to stand down section 3 so that we can work on work on some technical improvements to the clause, I think there have been some concerns—

**Mr Elston:** It is more than just technical improvements, because it does affect—

**Mr Wessenger:** I think that should be clear, because there is no intention to weaken the universal application of the section. But there have been some points that have been raised concerning the technical wording which I think do merit some further consideration.

**Mr Elston:** I appreciate what the parliamentary assistant has said, that they are not going to necessarily consider “substantial reason” as put forward in our amendment, but the impact that may be felt by the changes that are made may have something to do with the potential changing of wording in our amendment. That is all that I was getting at. I was not indicating that the New Democrats, by agreeing to stand this down, were going to go back and think about moving from their position that no matter how consensual, no matter how much goodwill there was between the parties, everybody gets looked after by the government. I am not suggesting or even considering that, but I am suggesting that for the betterment of this and the discussion about it, which we can carry on for the rest of the day, it just does not seem to be meritorious for us to do that until we see the context of the changes that you are proposing. That is why I think it is rational to do that. We can move on to another section.

**Ms S. Murdock:** I just have a question. If we stand this down, what we are standing down is the Liberal amendment. Is that what we are standing down? I do not know what we are standing down. Is that what we are standing down?

**Mr Sorbara:** Yes, because we are talking to—

**Ms S. Murdock:** But the motion has nothing to do with the reasons that we are standing it down.

**Mr Wessenger:** Let me just see if I understand what Mr Elston is saying. I think what he is saying is that there may be some problems with the wording of section 3 and it might be that, if I understand him correctly, if we make some changes in section 3 for technical purposes, that means that they would also want to make some changes in their amendment.

**Mr Elston:** There is a possibility, but the point that I merely want to raise here is just a matter that here we are going back to this part that is really spawning some real concerns about how this section 3d works or does not work or will not work. It might be necessary if there are changes, but there is no point our talking about it now until we know. That is all.

**Ms S. Murdock:** I guess what I am having—

**The Chair:** We have a request for a five-minute recess. Is there unanimous consent?

**Mr Elston:** You have caught Sharon in full flight.

**Ms S. Murdock:** Yes.

**Mr Elston:** Why do you not let finish her what she was about to say?

**Mr Sorbara:** He is like that.

**Ms S. Murdock:** I know.

**The Chair:** Some full flights take quite a lengthy time before they come back to roost. Could we have unanimous consent to recess for five?

**Mr Sorbara:** As long as Sharon agrees.

**The Chair:** Thank you, Sharon. We will resume at 5 o'clock.

The committee recessed at 1654.

1701

**The Chair:** Can we resume discussion of Mr Sorbara's motion on page 26? Any further discussion?

**Mr Sorbara:** Yes. I think Mr Elston wanted to talk about reasonableness.

**Mr Elston:** If we are going to step that down, then I will wait to say something about that later.

**Mr Wessenger:** No, we are not.

**Mr Elston:** Oh, you are not.

**Mr Wessenger:** These matters, I think, relate to all of section 3, and we are going to be on section 3 for a long time. The matters Mr Sorbara has raised do not particularly relate to this motion, but they do relate to the section as a whole.

**Mr Sorbara:** I notice, Mr Chairman, that the parliamentary assistant to the Attorney General is having a little caucus discussion with the majority of the committee. Is there anything they want to report to us as to how they plan on proceeding?

**Mr Fletcher:** I am just going to speak to the amendment, to your amendment, not to everything else that you have been speaking about.

**Mr Sorbara:** I was only speaking to the amendment.

**Mr Fletcher:** No, you were not.

**Mr Sorbara:** Yes, I was.

**Mr Fletcher:** I wish you were.

**Mr Sorbara:** I was.

**Mr Elston:** He will.

**Mr Fletcher:** I know he will.

**Mr Elston:** Give him a chance.

**Mr Fletcher:** I know he will. I was afraid that was going to happen.

One of the things that bothers me about the amendment—there is more than one thing, but I think that—

**Mr Elston:** Give us the full range.

**Mr Fletcher:** No, I will not. I think in our society what has happened as far as the court payment is concerned is that when a person does not pay, it is not seen as being wrong; it is seen as, “Oh, you didn't pay it, fine.” There is not the societal pressure on a person to pay the support payments, and that is what we are looking at in this piece of legislation, to make sure that the act does force people to make their payments when they are due.

Also, if this motion were to pass, it would take away the universality of what the legislation is trying to do, and

that is to make sure that payments are equal across the board and that the penalties are divided equally across the board. To put more discretion into the courts, as far as I am concerned—we can see it with other laws where there are discretionary powers given to a judge. One person may get a lighter sentence than another person. A murderer may get paroled or be allowed to walk the streets, whereas another may not be able to, and that is because of discretion. I can see that if it were to be at the discretion of the judge, one person—

**Mr Harnick:** You are not referring to Mr Drainville, are you?

**Mr Fletcher:** Yes, Mr Drainville is a good one; he did not murder anyone. I would just hate to see the discretionary clause where one person would be allowed not to pay and yet another person would be.

**Mr Harnick:** Just treat everybody like a big criminal.

**Mr Fletcher:** Yes, let's treat everyone equally. I think we should treat them all the same. I think that is a good idea.

**Mr Harnick:** Whack them all over the head with a big stick.

**The Chair:** Mr Fletcher has the floor.

**Mr Fletcher:** I think that is what this piece of legislation tries to do, make sure that everyone is treated equally and that the support payments are definitely being paid to the people who are in need.

**The Chair:** Further discussion on the motion on page 26? All in favour of the motion?

**Mr Sorbara:** Hold on a second, hold on a second. There is more discussion on the section.

**The Chair:** Go ahead, sir, and please indicate it when I ask.

**Mr Sorbara:** I know, but you are getting so good at your job, Mr Chairman, and I think the committee is unanimous in that respect. I recall the first few days that you were in the chair, you were sort of searching for direction. You were advised by a competent clerk.

**The Chair:** Mr Sorbara, I appreciate the compliment, but—

**Mr Sorbara:** Now you are almost getting too aggressive when you say: "Further discussion? All those in favour?"

**The Chair:** Would you refer to the bill, please, sir.

**Mr Sorbara:** It reminds me of the Democratic national convention of 1960. When the chairman of the convention was bringing about the adjournment of the convention he said: "The motion before this convention is to adjourn. All those in favour? Opposed? The ayes have it. The motion is carried. This convention is adjourned sine die." And there were thousands and thousand of people out there. The Democratic national party has huge conventions.

**The Chair:** Thank you, Mr Sorbara. Mr Elston, please.

**Mr Sorbara:** This convention is adjourned "sine die."

**The Chair:** Mr Elston, please.

**Mr Sorbara:** I think my friend Murray Elston has some comments on the subject.

**Mr Elston:** I think that probably what we should do then, if we are going to have to work at these section 3 amendments, not only this one that we are speaking about here, I guess we will spend a wee bit of time and talk about the whole makeup of this. I agreed with some of the remarks made by my—most of the remarks made by my colleague, not only just some—

**Mr Sorbara:** Nice recovery.

**Ms S. Murdock:** The truth will out.

**Mr Elston:** Actually, you know, it is interesting, because the Liberal Party has always had a history of having sort of a series of members who have independent perspectives. I will just reply to you, Sharon, because I will tell you the reason—

**The Chair:** Mr Elston, you will refer to the motion.

**Mr Elston:** —that we hold independent views is that we see a little bit of merit in the individual. Really all that we are talking about in this amendment is setting out the circumstances where individuals can have something that fits their circumstances, that it does not have to be seen as one group of individuals without exception, a member of a collective. Not everybody is the same. Not everybody is a scoundrel who refuses to make payments, and under the bill, of course, these people are all being told that they have no way of proving, as the bill is currently written, no way of getting themselves out of the support deduction order unless they are able to meet the test of "unconscionable." All I am saying is that there is, I believe, some justification for moving to allow individuals to show that there is a substantial reason, that in other words there is a very good reason, not just, "Milord," or "Your Honour," depending on what it is, "I don't want to make the payment, so as a result, don't do it to me." They have to show some real cause.

1710

I do not believe that there is any rational argument to be made by people there that when judges are considering all of the ramifications not only of the support required in terms of quantum, and also the fact that in respect of the division of matrimonial property, and with respect to access and custody, if those are also items, we should be so doggone concerned that the judge, in his or her ability, is unable to also levy some sort of reasonable, balanced judgement with respect to the issue of a substantial reason for not allowing the support deduction order to go to the director's office.

I do not see, when you are making such earth-moving decisions part of the ambit of the decision of that man or woman who sits as judge as these people dissolve their union, that you cannot also allow that man or woman to say, "On balance, because these people agree and because I think it is in the public interest, these people ought not to have to go through the government." It just does not make sense.

I know Mr Harnick is going to make his argument, if not under this amendment, certainly under a series of amendments which he shared with us at an earlier time, even as the deliberations of this committee were being held as people came in the door, because Mr Harnick has



held this view, if not from the inception of his days here at the Legislative Assembly, certainly as soon as he saw this version of the bill, and I compliment him for seeing through that.

But I have to tell you that "substantial reason for suspending" even, in my view and the reason I said I did not agree with everything my colleague said, will require some degree of determination through litigation. And any time you get into the courts, as we heard the panel of people who represented law associations and individuals who had gone through the process, you might as well kiss goodbye to several \$100 bills as it goes to appearing in front of our legal system now.

Basically what we were trying to do as we got on to the issues at the very outset of this clause-by-clause, and we had confirmed by you, Mr Parliamentary Assistant, was what we want to try and do is get the money to where it is needed. We missed out on my little amendment, which you did not sort of want to go after. I saw a whole lot of sympathy but not many votes, so we passed by that. But now here in a situation where we do not need government help, you are saying we are going to get involved anyway.

In situations where people who have very little left of a union which at one time was so promising, you now strip them of the last portion of the human qualities which they thought they had, which is dignity. At least if they have failed in a union which started out with great promise, you could allow them to get out of it as gracefully and with as much honour and dignity as is possible and as is practical.

You have to understand the human element to this thing, and the only reason—not the only reason but a substantial reason, if I can use the amendment's own words—why I think this is an important concept to build into this bill is so that you can allow a man or a woman to retain as much dignity out of failure as is possible. What a great psychological boost it is for some people just to go through this thing and say, "When everything else has fallen around me—I may have lost my business, I may have lost my house, I have certainly lost my family, I certainly have seen the disposition of a union with which I thought I was going to conquer the world in my early glory days—at least now I can perform and show people that I have been able to tackle the responsibility of carrying out my obligations without somebody looking over my shoulder and saying, 'No, you can't pay directly; you've got to pay us and then we pay somebody else.'"

What would be a substantial reason for not having the support deduction order enforced? Well, think of this example. A man has been paying his wife and their children directly for some period of time, loses his job temporarily, gets behind one payment. SCOE, as it now is known, is then introduced to the situation and he becomes an active member of the file, as does his spouse. On becoming re-employed, he reinstates his payments, actually catches up his payments, and starts paying the regular monthly payments directly to SCOE.

Problem: Wife's rent is due the 15th of the month. She does not get the cheque from SCOE until the 24th day of the month or something. Okay? What happens? His wife and children are always trying to catch up to the landlord's

request to pay the rent. Solution? The man pays one month's rent. Good for the wife, bad for the husband. You know why? Because he cannot get any credit from SCOE, and in fact they record him as being in arrears when he says, "I just paid the rent and I'll only pay you the balance."

Is there not a substantial reason for allowing those people to go ahead and deal directly so that, because of the mechanisms of bureaucracies that are set up, which have standard payment dates and all that sort of stuff, there can be some reasonable way of conquering the very practical nature of problems that men and women suffer every day of the month that they live separate and apart?

A substantial reason is, it is not practical to have these people sending the money through the mails or whatever way, or wiring it. I guess it will probably get into electronic deposits some time, if they can clear freedom of information and other problems, computer problems. But a substantial reason might be it just is not practical. A substantial reason might be that this man has been paying every time there has been a need for assistance to his wife and children.

This is not a hypothetical case. It is a case that occurred in my own riding, and it is a problem for that man, because the wife—two people who broke up and hated each other—came to his house one evening—they still live in the same town—crying, because she was again under financial difficulties. Let's face it: It is not easier to establish two households on the same amount of money that you used to have trouble running one household on. And here is a situation where, just trying to help, he ends up on the wrong end of this thing, and there is not a single way that they can get themselves out of it. There is not any way that they can extricate themselves from the difficulties of the bureaucracy receiving the money—he may pay on time—and then her paying it, because the landlord has come to think that perhaps if there is a date on which he—or she; I have forgotten whether it is a man or a woman landlord—is to receive the pay, he should wait for an extra nine or 10 days every month. They used to get just a little bit concerned, because, for some strange reasons, they have payments to make.

I am not sure that a judge could tell you that that in itself is a reason which is unconscionable under the meaning of your clause (a) as it now stands. Why in the world can we not give these people something to hang their hats on if they have a practical problem? I will tell you, you are not giving it to them under the section as it is written.

"A substantial reason"? I am not sure that perhaps—and the reason I said I did not agree with everything my friend said—"substantial reason" in every case would work out the difficulties with very practical, day-to-day living exercises which people find themselves confronted with as we consider the bill. But I will tell you, it will get worse if we do not give them a real exit opportunity when the circumstances require.

It is not always a situation, by the way, where somebody is going to go out and beat up on his or her spouse and say, "Sign up and agree that I don't have to go through this, or else." Sometimes there are people who are genuinely concerned that they will not be able to function reasonably

in our society without themselves taking charge of their circumstances.

Interjection.

**Mr Elston:** Mr Fletcher over there is mumbling about some kind of funny thing.

**Mr Fletcher:** There's nothing funny about it.

**Mr Elston:** But I am telling you, these people did not think it was very funny when they were confronted on the telephone by somebody from SCOE who said: "You people don't have anything to complain about. Once that money comes to us, it's our money. It's not your money, it's our money." I will tell you, if you do not give people real reasons, real abilities to carry on with their own lives in a reasonable fashion, you are taking away the last ounce of decency and integrity which some people feel has probably been left them in unions which started out, as I said, with so much promise when the marriage vows were first taken.

1720

How can we basically go and strip people of the humanity that we expect them to exhibit in other relationships? How do you expect to have anybody carrying on in our society under rules of social decorum when you are basically saying, "It doesn't matter whether or not you can relate one to the other, you have to go through some bureaucracy"? I am not saying anything about individuals in the bureaucracy, but by the very nature of administration of public funds in this type of thing, you have to be impersonal. You know, you just cannot go and get involved in each one of the subjects. You cannot be sitting there sort of saying, "Yes, we'll look after you." You can only do so much, because once you get involved in it, you are stepping over the duties.

The duties of this administration are to provide evenhanded administration of these trust funds. And although I put in an amendment which suggested that there should be some clear statement that there is an equal responsibility to either party, which was thrown out, it goes without saying that, as trust funds, the handling of this stuff has to be done in an evenhanded manner.

Where we are not being evenhanded is that by putting up this fake exit door, we are basically telling people: "You can't get out of it, because once we got ya, you ain't getting away from us, and we don't care what it's about. We don't care whether you are the best citizen in town. We don't care whether you have agreement with your people. We don't even care whether you have arrived at a consensus between the two of you as to how you're going to arrange your affairs. It's government, and that's it." That is why "a substantial reason," even with its vagueness, is far better than "unconscionable," because at least there is an opportunity for expecting good results from "a substantial reason."

I remember when we had the presentations here and I first sort of got on this case, I talked about two or three things, but one was "unconscionable" and the other was this thing with the four-month deposit and all that stuff. I basically said at that time, and I think it was agreed by the policy director and probably by others, that really the combination of that, the "unconscionable" and the consent,

was to make it so that nobody—nobody—could really escape this. That is what I found most objectionable, I think, about this, because that pretends that there are no circumstances under which people should be able to conduct their own affairs, and that is very difficult for us to say.

That does not even get us to the secondary problem, which is the fact that the volume of activity is so high dealing with just the good guys, if I can put them in that tone; that there are so many dollars being routed and re-routed through the bureaucracy. It goes from the payor to the bureaucracy to be processed, matched. Is it the amount right, it is right?—There is going to be a receipts clerk someplace. They are going to have to do each cheque. I do not suspect you are going to be able to do that by some mechanical means. I suspect you are going to have to look at them, file them; They are going to assign them into a trust account of some sort, operationally, because you cannot mix—I hope you cannot mix, anyway—trust money. So you are going to have to have trust accounts for each of these activities. You are going to have to credit interest on the overpayments made by some people who mistakenly maybe make the cheque for too much. You are going to have to charge debits against the people who do not send in enough. And those are for the good people, the people who are not the problems. Then you have all the ones who are problem people. Just by the very sheer volume, you are going to have a bureaucratic nightmare in making sure that the payments are taken from the payor to government, then paid out on time, in a timely fashion, to the men and women, with their children, who need them. That is tough too. That is almost impossible when you consider the level of funding.

I know that Floyd is in the process of doing his budget. I know you folks are probably up to your ears right now in briefings by each of the ministers as they come to you to explain why they think you should probably lobby the Treasurer just a little bit harder about the benefits of tourism, as Mr North was talking about today, or perhaps Ms Akande, who was talking about the money that needs to be sent out through Community and Social Services.

How many dollars do you think are really going to be made available for the successor to SCOE? How many dollars? Because we heard here, again from the witnesses who appeared in front of us, that the only sure way of making sure that there is better performance is by making sure that there is better funding. We did not hear exactly how much money was needed. We heard that some people had already anticipated a certain amount of dollars, because the clerk, over his own hand, had sent out a letter to one of his constituents saying that there was another \$5 million, I think. Remember that guy who came in and said, "I got a letter from you and this looks like your signature"? Do you recall that guy? He was talking about the funds that were going out to support this effort.

Well, I will tell you, this amendment basically has not only a reasonable and rational and academic merit to it, but it also has a very practical merit to it just from a public administration point of view. If you allow our test that is apt to have real affect, that is apt to give people real decision-making power, that is, as Mr Fletcher says, "Able to be



allowing judges some discretion,” or at least use of reasonable discretion, then you might very well be able to have a bill that works and offers these people who are running this successor to SCOE’s regime a chance at successfully providing money to men, women and children who need it. That is the problem that this is trying to address.

“Unconscionable” is practically never to be achieved, and I think probably somewhere on Hansard, if I were to go back and look diligently, but I do not propose to, you will see printed an acknowledgement from either the parliamentary assistant or from the director of policy for the AG’s department or from Ms Feldman, I am not sure, that said basically they did not want anybody to escape support deduction orders. It was not very reasonable to assume that we are going to get better levels of service when we all know now that the level of service is not sufficient to make sure that people can live.

So just to recap, personal dignity for those people who have suffered probably one of the worst experiences of their lives, probably the one time when they are using this as a building block to go on to something else that proves that they really can do something; creation of an illusory exit door for those people where they will go to a place and the lawyer will say: “Yes, that sounds unconscionable to me, son, I think we’ll just try this out, and by gosh, just pay your retainer here. What do you mean, not this week? Oh, okay, well by next month. You give me the retainer next month and we’ll start the application immediately after that.” Several months later, by the way, after the support deduction order is already in full force and effect, they are still arguing and another retainer is required.

Then you have the practical problem about whether or not leaving this thing airtight is going to prevent effective administration of this program. We all have heard what this program is running into now, where we are only enforcing a proportion of the claims against it. Remember, we are not even going to enforce all of the claims. Remember, if something is too difficult to enforce—what is it? What did we arrive at, it is “not practical”? Yes. If it is not practical to enforce the order, then the director may determine that she does not have to. So the only option that you are going to leave some people who get offended by this whole line of activity is that they are going to find ways of making it impractical to have this thing enforced, and that is not what we are trying to accomplish. In fact, that is what we are trying to eliminate.

How in the world can we be seeing ourselves as creating good public policy if the only way out is to make it as impracticable as possible for the government to enforce the order when people are more willing and diligent to enforce their own obligations? There is certainly in our society, in our culture, a diligence on our part to avoid anything that has activities tied too closely to the government, and sometimes people can be offended for the wrong reasons and hurt individuals they would have dealt with more reasonably directly, if they believe they are also beating the government at its own game.

1730

I feel strongly about the problems associated with the test of unconscionability. I feel even more strongly about

the issue of the human side of this, where people are being sort of told, “We don’t give a damn if you have suffered the worst setback in your sometimes very young life and we don’t care if you want to try and use this is a way of re-establishing yourselves.” But I also have a real difficulty with legislation that seems to say one thing and then sets it up so that you cannot reach the objective that the section speaks to.

I can see the letters going out to the people who will complain that, “I have been able to pay for the support order for my child and my spouse for the last five years.” I can see the letter coming back, drafted through the Ministry of the Attorney General, saying, “Show them clauses 3d(2)(a) and (b).” They can say, “Yes, you can go to court and you can establish that you can get out of this thing but it has got to be unconscionable.” And they would ask, “Well, what is unconscionable?”

It will depend on each circumstance individually assessed by a judge sitting in his/her chambers to determine whether or not your circumstances fit the case and therefore would be allowed to be free; ie: “I wish to wash my hands of that. The section is there, you use it and, by the way, you pay the lawyer.” Meanwhile the guy is sitting back saying: “Oh my God, I’ve got to pay those people again? This isn’t my fault.” Then you have somebody who is irate and then you go out and you see somebody who, having been fed up with the whole thing, says, “I’ll show those SOBs. I’m through. I’m gone. If they think they’re going to be able to find me, let them find me, because I tell you, I’ve got lots of friends who will hide me in Alaska or some place,” wherever they go.

For me, that is the difficulty that we are faced with, and just small changes in this wording are not going to really compromise the circumstances to such an extent. A judge equally can make a decision that the reason put forward by an individual is not a really good one, but “unconscionable” is just a little bit difficult to swallow. I just want to put my remarks on the record. I want to warn us about the human side of it. You may think as Liberals in our track record in the last five years we did not have much response to humanity, but that is not quite the way it is. We did then and we do now.

**Mr Mills:** That was then and this is now.

**Mr Elston:** Yes, and we are still the same old gang, somebody might say, but this particularly is crucial and there is not much partisan gain to be made in this, because I will tell you, there were New Democrats, there were Liberals, there were Conservatives, there were the unaligned, there were people who do not give two hoots about politics except because of this committee and there were people who just want to be left completely alone to do whatever it is they do. And they acknowledged, some of them who came to see us, that if they cause problems, “Yes, they should be right in it.” If somebody is defaulting—it is the old story, of course: “I’m not to blame, but if somebody else is having a problem, get him.” They acknowledge if they are causing problems themselves and if they are not doing what is required, then bring them in. But why should we not contemplate allowing people that

one last kick at human dignity? "This is real life," to quote an advertisement that precedes advertising for The Sports Network, but this really is real life, and I just want you to really think about it.

**Mr Sorbara:** Mr Chairman, I am going to make a proposal that will have us out of here a little bit early. First of all, I want to show you how different Mr Elston and I are one from the other in our party. He said he agreed with most of what I said. I am different; I agree with everything he said. That is the difference between us.

I want to propose that we vote on this amendment today. I want to propose that we vote on it in a few minutes and I want to propose that we do that on the basis that as soon as we vote on it we will adjourn for the day. If there is agreement on that, that is fine; if not, I am going to call for a 20-minute bell anyway, so that is all the work we are going to get done. If we agree on that, that is great. Okay?

**Ms S. Murdock:** Is Mr Harnick not speaking?

**Mr Sorbara:** I do not mind, but when we are ready to vote, we will vote on it and then we are out of here.

**Ms S. Murdock:** We have been at it since 3:30.

**Mr Sorbara:** I want to hear from Mr Harnick. I just want to put one more example to you before I finish my remarks. Mr Elston put a number of examples. I think they are relevant, but I just ask the indulgence of the committee members to listen carefully to this example, and if you can show me how the people in this example can relieve themselves of this act, then I will pack up my toys and go home.

**Mr Elston:** Leave your notes; we may need them.

**Mr Sorbara:** I will leave my notes. I might come back on another day, but I will pack up my toys and go.

Two people have been separated for a number of years; let's say, five years. The separation was mutual. There was no document of separation, there was no court order, they just said: "We can't live together any more. Let's separate." Okay? And they agree about what the support is going to be. He is going to pay 50% of what he makes at his steady job regularly and he just does—

**Ms S. Murdock:** No lawyers?

**Mr Sorbara:** No, they have never gone to see a lawyer, they just did that privately, between one another. They just said: "We've got to get out of one another's hair. You're going to look after the kids," and they have never seen a lawyer and they have never been to a court. The payments have been made regularly every month. That part of the paycheque goes from husband to wife and no public official knows anything about this. I want to say that there are more cases out there like this example than you and I know about.

**Mr Elston:** That is right, no public notice.

**Mr Sorbara:** Now something happens: She falls in love and wants to remarry.

**Ms S. Murdock:** Or whatever. Who cares?

**Mr Sorbara:** She falls in love and wants to remarry. This requires, I say to my friend Ms Murdock, the intervention of the state, because it requires a divorce. She cannot remarry. So at that point they have to go before the

court and put in legal form the substance of the support order that has been part of their lives for the past five years. Even though they say to the court: "Look, we've been living under these arrangements for five years. We don't want the director's help, we don't want a support deduction order," there is nothing in this act that allows these people the freedom from the state, because the unconscionability test does not apply. We have already gone through what the court can and cannot consider. So even though they have lived without this for five years, if he or she wants a divorce to remarry, suddenly the state is going to start managing the payroll deductions.

Maybe in my example some couples like this would say, "That's fine," but others might say, "No, that's not what we need." You cannot get out and that is all we are saying to you: Just let some people out who do not need this.

I would like a letter from the Attorney General saying that the bloody Liberals have been filibustering on this stupidity for days and days. I would like to stand this thing down, and if we get a letter from Howard Hampton saying the following things, "I have met with my own NDP members of the committee and we have discussed this thing and I have reconsidered it and we're not prepared to make an amendment," that is fine. I do not even know if the parliamentary assistant to the Attorney General has raised this thing with Howard. I do not know whether they have even considered taking an amendment to the cabinet submission to cabinet. We are talking here, but nothing is coming back. Do you know what I mean? Just tell us what you have done.

I want to tell you, on the most controversial bill that I ever took before Parliament, Bill 162, Workers' Compensation Board, I met regularly, almost weekly, with the Liberal members to hear what they were hearing in the committee, on a regular basis. At least I considered it as minister. On some things we said, "Yes, we should give a little on that, take a little on this," and that is what we did. All we are asking is to create some flexibility here so that the people Mr Elston has talked with—and you know what? The people in your communities will thank you. I will tell you something: The democratic process will thank you, because if you do this, you are here for more than just putting up your arms when Howard Hampton tells you to; you are here to make a difference, and that is why you are elected.

1740

So think of my couple who has been doing it on their own for five years, no interference by the state. There is no way for them to get out. If there is, I want to hear about it. I want to know that upon agreement, when the judge has reviewed the circumstances and says, "Pax vobiscum, go in peace," I will be satisfied. The unconscionability test does not provide for them to go in peace, and the next section, dealing with security and putting up money, does not allow them to go in peace, because you have to put up funds. That is only for rich people, not for poor people.

That is what we are asking. That is what this whole story is about. If you want to bring me a document saying that you have met with your minister on this, you have discussed it, then I will pack up my toys. Or if you want to change this, then I will pack up my toys. But frankly, I am



getting frustrated because I am talking until I am blue in the face and boring you to tears, but I am not getting any feedback.

**Mr Elston:** They are not bored.

**Mr Sorbara:** Mr Chairman, I know Mr Harnick has something to say on this. After that, I am prepared to vote on it, if we adjourn right after the vote.

I find this bill objectionable in its basic philosophy. I find it objectionable because the bill is attempting to do something that demands an adjudication between individuals on a universal basis. I find it objectionable that this bill is being approached as if we are doling out social welfare.

Interjection.

**Mr Harnick:** I will have some comments regarding some of the things Mr Fletcher was saying in a moment, but I find it objectionable that this bill is going to deal with conflict between individuals on a universal basis and I find it objectionable that we have a bill that is going to take away the opportunity of a court to tailor to individuals that redress they need in order to put their lives back together and in order to maintain a steady flow of funds on a proper basis between the payor and the person who needs the funding.

It is interesting that there is such great fear for a court to have the discretion to make these decisions. Mr Fletcher, and I overheard him, said, "What about the right of appeal? Everybody has the right of appeal." Dealing with this legislation, there is no right of appeal because there is no right of a proper adjudication at first instance, because the judge's hands are tied.

**Mr Fletcher:** I did not say that.

**Mr Harnick:** That is what you did say.

**The Chair:** Could we refer only to the matters that are in front of us? I did not hear Mr Fletcher's comments, nor should they—

**Mr Sorbara:** I support my friend the member for Willowdale.

**The Chair:** Please.

**Mr Harnick:** The judge's hands are tied, so not only is there no opportunity to appeal, there is no opportunity at first instance to have a judge tailor to the individuals the redress that they need, because the philosophy behind this bill is that we dole it out like universal health insurance.

I can tell you that dealing with Bill 162, the Premier, as he now is, the opposition leader as he then was, discussed the kind of redress available under Bill 162, and what he said was: "Bill 162 is no good because it deals with meat chart justice. You get what is prescribed and you have no right of appeal." Well, that is what this bill does to the idea of support. It ties a judge's hands, so you get what the legislation says you can get.

Interjection.

**Mr Harnick:** I am not commenting on Bill 162 or the contents thereof, but I am commenting on the fact that this bill takes away people's rights. It does not expand people's rights; it takes them away.

You know, it is interesting, because when you take a look at something as contentious as a family breaking up,

you find that there are families, probably 25%, if the Attorney General's figures are accurate, that comply with their obligations without having to be forced to go to a court and to have an order imposed against them. If we now create a situation where those 25% are thrust into a system where animosity is easy to breed, we are now affecting more than just support; we are affecting the whole family. We are affecting the custody. We may not be dealing with custody, but when we force people into court and we force people to go into a system that is based upon animosity and fighting between one another, we affect the custody rights. We affect the relationships between mothers and fathers and children.

Why anybody in this room would want to take the 25% of people who comply and force them to get into this system is beyond me. I suspect that every one of you who votes for this particular bill as it now stands, without the amendments, is doing your utmost to get more people to be engaged in the adversary system and to get more people to hurt one another than we ever had under the existing legislation, and I suspect that if that is what you want, that is what you are going to get, but it is not right.

You do not dole this out like you do health care. You do not dole this out like you do social welfare. These are matters that have to be determined based on the facts in every situation, which are always different. When you take away from the judge the opportunity to view those facts and to make a determination, after people have been cross-examined on affidavits or cross-examined by being put in the box directly, when you take that opportunity away, what you are creating is a bad system, because it is a system where everybody is treated the same way, and you do not do that with legislation that is supposed to protect individuals.

If you think that creating a universal system is going to protect individuals, you are wrong. I suspect that every person in this room has to look himself in the eye, in the mirror, and say: "This is bad legislation. We can do better." But if your marching orders are to pass this legislation because somebody told you, without looking at what it really does between individuals and without looking at the fact that it takes away the right of the judge to tailor legislation for individuals, then you are creating bad law.

If that is what you want to do, let it be on your heads, because nobody has come in here and said, "When those 25% more are put into the SCOE system, the SCOE system is going to get 25% more funding, because right now they can't handle what they have." You are just going to compound an already bad problem by forcing inadequate resources in an area where you do not have resources now, plus you are going to be creating bad law.

It seems to me we have a golden opportunity now to say that actions between individuals do not have to be determined on a universal basis, they can be determined on the facts in every case. As soon as you stop looking at the facts in every case, you are going to create bad law and you are going to create a situation where people do not have the right of appeal.

I recommend that everyone read what the Premier said in his comments about Bill 162, the right of appeal, legitimate

appeal. We do not have the right of legitimate appeal in this bill, because it takes away people's rights. It ties judges' hands. Why bother even having a court? The judge cannot do anything anyway. His hands are tied. Why not just let the director do all of it? There is no discretion here. There is no reason to cross-examine people, because the legislation says once you are in, you are in and you cannot get out.

1750

You have a great opportunity now to make this bill better and you have that opportunity to make it better for the individuals it affects, and every one of them is affected in a different way. I find it objectionable that anyone would come in here and use the word "universality" for a bill that is supposed to look after the relationship between individuals. Anybody who uses that term "universality" and treats everybody the same is creating bad law. You have the chance now, at least some of you, to say: "I am not going to toe the line and make bad law. I can make this bill better."

**The Chair:** Any further discussion?

**Ms Mathysen:** I would suggest that if couples really want to opt out, they can create separation agreements that are not filed.

**Mr Sorbara:** No.

**Ms Mathysen:** About 80% of couples settle amicably without a separation agreement. Bill 17 deals with the 20% who cannot agree and for whom there is a real possibility of default. With this in mind, I suggest that we vote on this Liberal motion.

**Mr Mills:** I thought one of the points that I heard my colleague Mr Sorbara mention was that there had been no discussion about your point of view and your concerns with the Attorney General—none—you know, that we are here like seals, we are snapping at fish and we are just going to vote because we are marching to Zion and we have been told to march in that direction.

**Mr Elston:** We know they are keeping you hungry.

**Mr Mills:** In respect to what you said, surely the parliamentary assistant here can tell you that there has been some talk about your concerns with the Attorney General and the Attorney General has recognized those concerns. He has more or less said to us that, notwithstanding that, it changes the whole thrust of what we are trying to do and we are not about to bend to that change to the thrust. I would be remiss personally if I thought that you thought that we do not take any notice of what you said and that it has not gone back to the Attorney General, because it very much has gone back to the Attorney General.

**Mr Elston:** Oh, so he is being intransigent.

**Mr Harnick:** I would hope that on the basis of what Mr Mills says, and I believe that he says it with great sincerity, what we have discussed in this room today should go back to the Attorney General if in fact that is the case. I think before we vote on this and before we make a decision that we are going to regret later on, the Attorney General should hear the remarks that were made. He should read the transcript and he should have the opportunity

to reconsider, because you are about to pass bad law here. At least take back what we have said today to the Attorney General and say to him, "Tell us that this is wrong so that we can go back to that committee and we can stand up and say why it's wrong and why Mr Sorbara was wrong and why Mr Elston's wrong," and I suppose why I am wrong. Do us that favour and take this back to him. You have now got the opportunity.

**The Chair:** Ms Murdock, were you just stretching?

**Ms S. Murdock:** I just wanted to respond to Mr Harnick's comment. Everything that has been said here today has been said here before, and those very comments have been taken back to the AG and we have discussed them. Basically, if this clause were to go through, the effect of it would be no different from what we have at the present time. I say that we do not leave today until we vote on it.

**Mr Sorbara:** I am offended by what Ms Murdock has just said. Look, she said to me that this is the heart and soul of the bill. She is saying therefore that universality is the heart and soul of the bill. But the testimony that we heard from the Attorney General and from the staff of the Attorney General, and the director and the parliamentary assistant, said that this bill is very different from the current system that we have. If we are only talking about this one section as making the bill different from what we have now, what in the world have we been doing over the past—my God, it is almost two months since we first started discussing this bill.

Besides that, what she said is wholly in contrast with what Mrs Mathysen said. Mrs Mathysen said that most people do not have support orders. I think that was the thrust of the comments that she was putting on the record. Well, if she can convince me or the parliamentary assistant of the Attorney General can convince me or Mr Mills can convince me, or Mr Fletcher or anyone, that the couple I described in the example that I spoke to you about a few minutes ago can get out of SCOE, then I am satisfied. But I would like to hear from—

Interjections.

**Mr Sorbara:** Well, I am sorry, because I thought we were going to vote after my remarks, but everyone interjected, so I am interjecting now too.

I want to apologize to Mr Mills. If he is saying to me that this committee and the parliamentary assistant to the Attorney General have sat down in council with the Attorney General and discussed these matters, then I am satisfied. That is all. And if he is saying to me that he really believes in his heart of hearts that it is important to have universality, not to let anyone out, that is fine.

**The Chair:** Could I interject at this moment, Mr Sorbara?

**Mr Sorbara:** Sure.

**The Chair:** You had proposed half an hour ago or so that we vote on this particular amendment. It is almost 6 of the clock and I have one small item to distribute.

**Mr Sorbara:** Then we will vote tomorrow.

**The Chair:** Should we adjourn until tomorrow to continue discussion of this amendment?



**Mr Sorbara:** Sure.

**Mr Wessenger:** Why do we not just do what Mr Sorbara said, vote on it?

**The Chair:** Mr Sorbara suggested that, but he seems to be retracting that suggestion.

**Mr Mills:** He said if we had discussed it with the Attorney General, we would be prepared to vote, and I am saying we did.

**Mr Wessenger:** I am just suggesting, why do we not take Mr Sorbara's suggestion and vote on it?

**Mr Harnick:** I have appointments. I would really like the opportunity to mull this over tonight.

**The Chair:** Mr Harnick and Mr Elston want to continue discussion. Mr Sorbara's remarks seem to have been retracted.

**Mr Harnick:** It is now 6 o'clock.

**The Chair:** It is one minute to 6. I doubt that Mr Elston and Mr Harnick and Mr Sorbara will be finished by 6 o'clock.

**Mr Harnick:** I want to think about this overnight so that I might be able to convince you people that what you are doing is wrong.

**The Chair:** Are there any further comments on this?

**Mr Sorbara:** I have a motion to adjourn, being 6 of the clock, and you have matters to take up, so let's get out of here. I have people waiting for me.

**The Chair:** We sit until the House adjourns, which is 6 o'clock.

**Mr Sorbara:** Do you have things that have to be considered while we are in committee, prior to adjourning?

**The Chair:** I have something which I have to distribute before we adjourn.

**Mr Sorbara:** Okay. Shall we just agree to stand down this debate until tomorrow and let the Chairman distribute what he has to distribute so that we can all go to our 6 o'clock meetings? Can we agree to that?

**Mr Carr:** I have one at 6:30 in Peel.

**The Chair:** You are going to be late, lad.

**Mr Sorbara:** Unanimous consent? Yes?

**Mr Harnick:** You have my consent.

**Mr Sorbara:** Well, he does not want us to adjourn until he distributes something, so let's move on to that. Let's stand down the discussion of this matter until tomorrow.

**The Chair:** It is a reply to the referral to the Speaker which I am distributing.

**Mr Sorbara:** This is all to Cam Jackson, the reply.

**The Chair:** That is right, yes. We are adjourned until 3:30 tomorrow.

The committee adjourned at 1800.

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## Legislative Assembly of Ontario

First Session, 35th Parliament

## Official Report of Debates (Hansard)

Tuesday 26 March 1991

### Standing committee on administration of justice

Child and Family Support  
Statute Law Amendment Act, 1990

## Assemblée législative de l'Ontario

Première session, 35<sup>e</sup> législature

## Journal des débats (Hansard)

Le mardi 26 mars 1991

### Comité permanent de l'administration de la justice

Loi de 1990 modifiant les lois  
relatives aux obligations  
alimentaires



Chair: Drummond White  
Clerk: Lisa Freedman

Président : Drummond White  
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**Mr Harnick:** I think really what caught my ear was your original explanation. I may have heard it wrong and I apologize, but your original explanation was that you could not tell the judge, or the judge could not consider the fact, that the support order itself might be under review in another court. I believe that is what you said.

**Mr Wessinger:** No, it would not be under review in another court. It would be the same court.

**Mr Harnick:** But what if there is an application in another court?

**Mr Wessinger:** Why do I not let staff clarify that.

**Ms Pilcow:** I do not understand why you would have it happening in another court at the same level, but let's just imagine that there was a motion already brought to vary the support order. The court can know that, but in the context of an application to suspend, that evidence is not relevant. There are only a few grounds upon which a suspension can be granted. Now the court, on an application brought to vary the support order, because it is an inappropriate amount, in that context can reduce the support order and then reduce the amount that is being deducted. But you cannot get the amount that is being deducted reduced without first showing the court that the amount of the support order itself is not appropriate.

**Mr Harnick:** I understand that, but what concerns me is the fact that you say that the judge who is deciding cannot consider whether there is another judge deciding the issue of the support order itself. That is what I just heard you say, and it was the same thing that the parliamentary assistant said. I have some concern that it may be very relevant to the judge deciding the support deduction order problem that there is an application or motion outstanding before another judge who is deciding on the support order itself. I cannot see how you can include this section and tell the judge that what another judge is doing is irrelevant and cannot be considered. I cannot see how you can have the audacity to do that.

**Ms Feldman:** Mr Harnick, if I might, a judge can listen to whatever the payor wants to say with respect to a motion he might have for variation of the support order. The only thing this provision indicates is that the judge cannot, based on the grounds that the payor might be putting forward for his variation, find that to be sufficient grounds for unconscionability, and therefore that the support deduction be suspended, because if that judge did that, there would be no incentive for any payor to complete his variation application.

What might happen in the case you indicate, where there might be a corollary, two proceedings, like parallel proceedings, one for a variation and one for a suspension, is that the judge who understands that there is a parallel variation proceeding will adjourn the suspension request to be dealt with in the context of the variation proceeding, which is how things will happen in most instances, because in the context of a variation proceeding, most payors who wish to rely on the grounds will bring a request for a suspension on an interim basis. That is different. That is a judge hearing a variation application. What we want to avoid is the payor who goes to court on what should be a

variation application and, instead of bringing the variation proceeding, just puts forward the grounds requesting a suspension, receives a suspension and then has no incentive to actually deal with the matter properly, and for the judge to entertain both his allegations and the creditor's allegations.

1550

**Mr Harnick:** I understand what you are telling me, but you will never convince me that you can, or that you should tell a judge that he cannot consider in terms of unconscionability what is going on in another court or what the stage of proceedings is in another court. I do not think you need this section. I think you can accomplish your purpose—which I stated yesterday I did not like—very well without this section.

**Ms Pilcow:** In fact, the reason the section was added is because one of the lawyers from the Canadian Bar Association who was consulted wrote to us following the standing committee and indicated that in her mind there was confusion as to when you would use the suspension paragraphs and when you would use the variation provisions, and there was a great concern that people would use the suspension paragraphs at a time when they should be relying on the variation procedure. So they were very concerned that that should be totally clear, that you could not vary your support deduction order without varying the underlying order. They wanted the bill to be very clear in that respect, which is why we added that.

**Mr Harnick:** Now that you have mentioned that letter, might we see it?

**Ms Pilcow:** Actually, it was given to the clerk for distribution. I am not sure what happened to it.

**Mr Harnick:** Might we see that letter or stand this down?

**The Chair:** It seems like a reasonable request. Shall we stand down this section until such time as we have all examined the letter from Carole Curtis? Agreed. We then move to page 27, Mr Sorbara's motion. Mr Poirier, if you could read that please.

**Mr Harnick:** Is this the white 27?

**The Chair:** The white 27.

Mr Poirier moves, on behalf of Mr Sorbara, that subsection 3d(4) of the act as set out in the government motion be struck out and the following substituted:

"(4) For the purposes of clause (2)(b), security shall be in such amount and in such form as the court considers reasonable having regard to all of the circumstances."

**Mr Poirier:** Obviously this is to give more flexibility to the court for the definition of the word "reasonable" as opposed to imposing a very formal limit on the amount.

**Mr Elston:** Yes. That is one of the issues we talked about when we had people appearing in front of us, although we did not have people exactly speaking to the issue of the amount, or whatever. We just believe it is probably preferable that there be some flexibility to determine under the circumstances what is available for people to file—or at least to give a security, rather than saying in the legislation that the judges have no ability to exact from

a potential payor, or from the payor I guess by this time, other than four months of payments.

From what I understand, basically this is a tool which will cover the bureaucrats' need to have some time for catch-up if somebody defaults. I can understand that they like to have about four months. The question of how much is needed is debatable, but they like to have about four months from the time of knowledge of a default until they can actually bring the person into the system if there has been a consensual and unconscionable finding, I guess, with respect to some of these payors. Hence the failure of the support deduction order to work from the very commencement of the support order's effect.

It seems to me that in all events, we have to make this bill at least reasonable in terms of its application, and that for a good number of people who are going through the experience of family breakup, the requirement of having four months of payments up front as the only option probably will be more difficult to deal with for those people who are not very well off. In fact the wealthy people will be able to afford something like this, but there is no flexibility to deal with honest people who have very few resources invested or wherever you might find funds to put in place.

It seems to me this really speaks to a very bad effect that this bill has. I do not think there is any intention or any understanding that I got, at least, that this was supposed to be a bill that was going to be more friendly for wealthy users than it is for people who are poor, but that is the effect of the section as it currently reads. I think at least you could provide some flexibility for the judge to say that they in fact go, without having to put in place four months' payment, so that they can buy their way out of the statute. I do not think it is fair.

I do not like it because it means wealthy people can buy their way out and the less well-off are going to be forever chained with this. You either provide access to an exit opportunity for everybody on a reasonable basis so that they can afford it or you tell everybody you are not going to give them any opportunity. This whole section is a smoke-and-mirrors exercise. You do not want people out, but you put in a test of unconscionability, as I said yesterday, so that you can write your letters and say: "Oh, yes, you can get out of this if you prove there is an unconscionable relation between the imposition of this support deduction order and your particular circumstance and if you've got the agreement of your spouse. And if you've gone through those hoops—oh, by the way, you are going to have to buy your way out by depositing on file four months of payments." And when they have very scarce resources, you are going to be asking those people to keep four months of payments tied up in some kind of trust account which presumably will not bear interest, although we have not got into that.

I would like to have some understanding, when this motion is defeated, because I can feel defeat coming on—but in my view there will not be an allocation of a reasonable interest rate. Some paltry sum, if any, is going to be credited to these people for having these four months of resources standing in a trust account with the government.

In addition to that, if these payments are to be made and if these holdings are to be held in the office, I would like to figure out how the director is going to ensure a separation of these trust funds, because you cannot ever have intermingling of people's trust accounts, and these moneys are being received for the benefit of the payee. You have to set up a very complex system to deal with these types of payments—and I am making an assumption that these four months of deposits are going to be in the hands of the director or her people or someplace—to make sure that money paid by payor 1 is going to go to payee 2, and that you are not going to end up having a mixture of funds held as a four-month deposit with the government of Ontario intermingled with everybody else's funds. How are you going to keep that straight?

In my mind, that is not the important issue in terms of the primary focus of my remarks. My primary concern still is that there is unequal access based on economic power to buy one's way out of this bill. I raised it at the time we had the presentations and I raise it again now and boy, it would be nice to have an adjudication on this issue about what is rational and reasonable. We can then go in and ask for some of the material we asked for when we were having our hearings, and which has gone into the drafting, at least in a cursory fashion, of the regulations around how this organization will operate to deal with certain new provisions like this one. But I really think if we are going to penalize people for not having economic ability, then this section, as it is written, has got to be replaced with something like this one which will allow a judge to determine in her or his mind what is reasonable for people.

Remember the two circumstances or tests we have already met: One, a judge has made a finding of unconscionability. There is also a second filing of information that agrees if there is consent, as between the payor and payee, to get this far presumably. Right? Right. Nobody is nodding. At least you are awake. But my problem is, when we get this far and we ask people to pay a price, poor people cannot afford it. Remember, this is one of the most harrowing experiences people go through, and there are all kinds of problems associated with it from a human standpoint.

We talked about emotion, we talked about the problems in trying to reassemble oneself after going through this, and then you are asking a couple who probably are on meagre resources to deposit with the government four months' worth of earnings from someplace, or four months of borrowings or whatever it is. It seems to me it just is not very rational that we are taking those funds out of circulation from the family that really needs them. It just does not make sense to me and I wish I could get you to agree with this. Actually, if you had better wording I wish you would provide it to me. I am not hung up on the wording so much as I am hung up on not making it available to everybody equally. If we are looking at economic power, here is a whole statement about this bill and how it affects, or maybe I should say offends, our social, egalitarian natures.



1600

**The Chair:** You made that point from the very outset and it is interesting, actually. I would not be surprised if it was your name that should rightly go with it.

**Mr Elston:** Actually, our whip of this committee is the full-time member, Mr Sorbara. I sub in and out, so my role here is not as member of the committee but as subbed-in committee member.

**The Chair:** I am sure the motion here comes with your inspiration. Any further discussion?

**Mr Harnick:** This section only confirms that the intention of this bill is not to permit anyone to opt out. It is another indication that the intention of this section is window dressing only. It is virtually impossible to opt out of the provisions, and this section with security and unconscionability makes that abundantly clear. I believe you are increasing the chance of causing strife in families that can otherwise do without these provisions, but you are making it impossible for people to have the choice of getting out of these provisions who would otherwise be paying without the need to go through the hoops you are creating.

**Mr H. O'Neil:** Mr Chairman, before you put it to a vote, I wonder, are your members able to change their minds on this or have you made a decision, or could we hear either from you or some of your staff on some of the comments that were made by Mr Elston?

**Mr Wessinger:** I think the major purpose of this clause is really to provide a security in the event of default and since right now only 16% of individuals are in compliance, in full compliance, there is a real need for—

**Mr Elston:** Without blemish, you might say, since he is fully in compliance now.

**Mr Wessinger:** Without blemish, so that means there are no arrears. There are 16% with no arrears now under the support and custody orders program.

**Mr Elston:** But just to make it clear, you are talking here—

**The Chair:** Mr Wessinger does have the floor, sir.

**Mr Elston:** Well, this 16%, though, relates to current case load and I just want to be absolutely sure that people know we are talking about people who have other track records who will now be brought in. I just do not like your using that 16% as though it is an absolute number of the people who are separated and have support orders.

**Mr Wessinger:** No, I am not implying that. These are people under the SCOE system—

**Mr Elston:** Well, people reading this Hansard—

**Mr Wessinger:** —and we assume the same people would be under this program. The four months is what is considered a reasonable period for the amount of security it would take for the branch to get enforcement proceedings going and give some security to the income recipients. So it is really a balance in favour of the income recipient. That is the purpose of it, to protect the income recipient.

**Mr Elston:** Yes, and if you are poor, it is no help.

Again, I just have to say this is a protection to cover the backsides of the system, the bureaucratic system not

the bureaucrats, not the humans. People will do their very best, but I will tell you, if you are poor and you can hardly afford to make your payments—remember, we heard some evidence from people who are making payments already and who had actually defaulted, and some of the difficulties were that they lost jobs, they were sick or they had another reason. How in the world can you expect people whose marriage separations or breakdowns might have been caused partly by economic difficulties, by ill health or whatever to pay four months of payment in advance when they can hardly afford to keep themselves?

I understand there are some circumstances where people are absolutely the worst individuals in the world, but remember there are other reasons, and just remember they have already passed the test of unconscionability for the judge, they have already passed the test of having the consent of the other side and then we are asking them to put up four months' worth of payments. I am telling you, if that is not a balance in favour of the wealthy of this province, an exclusion of the people who are not economically well off, then I will eat my shirt and yours too. I mean, it is terrible.

**The Chair:** All in favour of the motion on page 27? Opposed?

Motion negatived.

**Mr Elston:** The wealthy only need apply.

**The Chair:** Have the members had a chance to look at the letter Mr Harnick was requesting?

**Mr Harnick:** May I just correct the record? I notice that the letter is not from the Canadian Bar Association. It is from the Law Union of Ontario, and there is a very great difference. I suspect if you are taking letters from the Law Union of Ontario or seeking its advice on 15 March 1991, which was considerable time after the hearings, it would probably be well worth your while to seek the advice of the Canadian Bar Association, which has a family law section, to see what it says about this.

**Ms Pilcow:** Just in response to that, we sought the advice of both groups. Carole Curtis and the members of her group are also members of the Canadian Bar Association. I apologize for making the mistake. It was from the Law Union of Ontario. They chose to respond at that point, although they were consulted well in advance of standing committee, just for the record.

**The Chair:** I believe we did have representation from the Canadian Bar Association family law section during our hearings.

**Mr Harnick:** Nothing that responds to what is in here. I do not know what the timing or the sequence was because unfortunately I was not here.

**The Chair:** Any further discussion on page 26b? We will return to that. It was put aside pending reading of that letter. Further discussion on the government motion? All in favour of the government motion? Opposed?

Motion agreed to.

**The Chair:** Can we go back, then, to page 28.

**Mr Wessinger:** Mr Chairman, I am wondering if we might return to a prior motion. I need unanimous consent. This is an amendment in response to Mr Sorbara's sugges-

tion he made yesterday about there being a drafting problem. This is with respect to subsection 3c(2b).

**The Chair:** Lisa suggests that we finish this particular section, 3d, before we start on something else.

**Mr Wessenger:** Do we still have something left?

**The Chair:** Can we continue with that first?

**Mr Wessenger:** Yes, okay.

**The Chair:** The motion on page 28, a Liberal motion, 28 white. Mr Poirier.

Mr Poirier moves that section 3d of the act as set out in the government motion be amended by adding the following subsection:

“(4a) No order shall be made under clause (2)(b) unless the court is satisfied that the parties have voluntarily agreed, without undue influence, to the suspension of the support deduction order.”

**Mr Poirier:** Obviously, this is an added aspect of security that is self-evident. With the voluntary agreement, “without undue influence,” I think those three words are key words and with the government members’ indulgence, we think they would consider adding that condition, (4a), to the security aspect of the bill.

**The Chair:** Mr Elston.

1610

**Mr Elston:** Just briefly, I think it is quite clear why that is here. It then requires, or at least it lets everybody who is going to come forward with a consent understand that his or her lawyer will have to lead evidence about the issue of undue influence and that there will have to be some information in court to satisfy this particular section.

I think one of the things we all heard during the presentations was that there are situations where people will try, through bad means, to influence somebody offering a consent. This is just an extra of evidential material which would be required, I think, to ensure that someone could be told, even if the person gets consent, that he or she is going to have to lead evidence to ensure that there is no undue influence, there are no beatings and there is nothing else being exerted solely for the purposes of consent. You are free to ignore it if you wish, but I think it must be stated quite clearly that we want some indication that the people who are least able to defend themselves are not going to be taken advantage of and that some evidence to that effect must be in front of the court when the decision is ultimately made.

**The Chair:** Further discussion?

**Mr Elston:** You shake your heads every time I make a presentation. I know, I should keep making presentations.

**Mr Wessenger:** Yes, I appreciate the thought behind this amendment. It certainly has some merits. However, the consequences of it would be that on each occasion the parties would have to be present in the court every time an order suspending a support deduction order were made. I think that is the first point. It would not allow the normal court process of parties agreeing to a suspension order and on many occasions, on most occasions probably there would not be coercion. So there is that aspect to it. The other aspect is that a person who is truly coerced would

likely be coerced even in a court setting. But that is basic. So for those reasons we oppose it, but as I said, it has a good thought behind it.

**The Chair:** All in favour of the motion on page 28? Opposed?

Motion negatived.

**The Chair:** The motion on page 29. Mr Poirier.

Mr Poirier moves that section 3d of the act as set out in the government motion be amended by adding the following subsection:

“(4b) A court in making an order under clause (2)(b) may waive the requirement to post security if it determines, having regard to all of the circumstances, that it would be reasonable to do so.”

**Mr Poirier:** Obviously another evident, logical and self-explanatory section. I will not take credit for it because I am replacing Mr Sorbara, I must admit, but obviously the aspect of the “may waive” gives the added flexibility to the court system to be responsive to particular situations where it may warrant and may use subsection (4b) to be flexible with respect to specific circumstances. Thank you.

**Mr Elston:** Mr Chair, I will not speak to this because a lot of the things I said previously about another section would apply equally, but I would ask that the people respond to some of the questions I have about the practical effect of the manner in which they take security deposits, about how they are going to credit interest and how they are going to operate the facility to ensure that there is no intermingling of these trust accounts by people. I want to have those answers now so that we can deliberate somewhat more fully on the nature of the merits of this proposal.

**Mr Wessenger:** There is another motion. I believe we will be discussing the matter of interest.

**Mr Elston:** I am not asking about our other motions, I want to know now about the intermingling of deposits and taking of security and the issue surrounding the way this will be dealt with.

**Mr Wessenger:** I think I will let the director answer that question.

**Mrs Mills:** Mr Elston, I think you can appreciate that the detailed implementation planning as to how the funds will be handled has not yet taken place. When the bill is in its final form, that will begin in earnest. But at the moment we take care of a large number of funds that are not intermingled in accounts and we will look at this in the same light; and I might add that the security has been requested in cash because—

**Mr Elston:** I know.

**Mrs Mills:** —because the purpose of the security is to be able to move on it. I also wanted to make that comment.

**Mr Elston:** Okay, are you going to establish, then, individual trust accounts for each account that is running? Are you going to have an account at the Province of Ontario Savings Office, or what are you going to do?



**Mrs Mills:** We deal with the Royal Bank at present. I am only saying that all the options will be looked at both to secure the funds and to make sure that they are kept intact.

**Mr Elston:** What interest is credited to those accounts?

**Mrs Mills:** Interest rate will be discussed at—

**Mr Elston:** No, no. Currently what is the interest at which you credit those accounts?

**Mrs Mills:** Why do you not respond to that, then, on the interest issue?

**Ms Feldman:** As I understand it, Mr Elston, moneys in the Province of Ontario Savings Office are at the going rate. There are very many sectors of the government and we are reviewing how they handle funds, such as the Supreme Court account and the public trustee's office. Other legislation has security provisions. The Ministry of Treasury and Economics, of course, deals with security other than cash on a regular basis, bearer bonds and registered bonds, and the Ministry of Revenue of course deals with cash. All these options are being reviewed and will be considered—

**Mr Elston:** Okay, that is fair enough, with review.

**Ms Feldman:** —with effect to the most administratively feasible way of dealing with the security.

**Mr Elston:** But you are dealing now, as the director has just indicated, with the Royal Bank. What is the rate of interest that is credited to each of the trust accounts now?

**Ms Feldman:** I do not know. The way matters are now, we do not hold security as a matter of course in those particular accounts. If there are overpayments they will be paid out on court order. Interest is not a running issue at the present time, although we quite appreciate that it is an issue that has to be addressed for the purposes of holding security.

**Mr Elston:** What about overpayments, though? I mean, you are not going to release any money that is held by you as an overpayment, and currently you do not release it anyway, until you have a court order?

**Ms Feldman:** When I speak about overpayments, it really goes back to the issue you discussed in a previous week with respect to gratuitous payments, and that is quite a different issue. When there are arrears outstanding, whether those arrears are going to be credited with respect to that payment or whether it is a gratuitous payment standing alone, that is something that is really beyond the scope of the particular issue we are discussing now.

**Mr Elston:** Sure, but just so that I can understand, you currently credit interest to overpayments, do you? The answer is you do not know, yet I suspect—would you try to find that out for us, so that I understand what your current practice is?

It is my view, by the way, that you are not paying interest at all or crediting interest at all to people who probably can least afford to lose the operation of their money. I just want to verify that you are going to set up a system which at least is going to credit these people. You are going to vote against all this stuff; at least the members are, you are not. But your advice is that they vote against all the proposals we have and that you are going to hold a lot of money from well-to-do people and from anybody

who is courageous enough to borrow it from Canadian banks or credit unions or whatever other financial institution they can go to, trust companies. They are going to pay interest on that, but you are going to hold the security. I hope you are going to pay them a commercial rate of interest so that they can afford to get into this racket, because if you cannot afford to buy into it, it is an unfair piece of legislation, just to repeat my position.

Perhaps if you have a detailed plan starting to be formulated we could see a little bit of it, because I know how people think about some of these things and I am quite familiar—to be fair to the director, who is only with us now for a short time in her current capacity, detailed plans are not finalized until the last one, and I appreciate that. But you must have some thought, because this is a big administrative nightmare if you get charged with using somebody else's trust funds. It is the public servants who are charged with using somebody else's trust funds for a purpose like financing the consolidated revenue fund or something like that.

This is a problem for me, and you are not going to give anybody a way out so you better start understanding. I have raised the issue before, just to be fair to myself, when we were hearing presentations, that I wanted to see some of the material that focused on how this was going to operate.

This reflects, by the way, some presentations made by people earlier on as well, that if you do not have the funds to make the system work, you are really going to be in bad shape. This is another big administrative area. I suppose it will need at least, if not a lot more people, some very well educated people in the ways of operating computer systems. It probably will also require the introduction of a new computer program with special assistants hired on contract or as permanent staff to run this thing. A big problem administratively, a very big practical problem and another kick at the economic viability of the people who are least able to afford it, if you are not going to end up having some pretty good interest payments going to these people.

**Mr Harnick:** I agree with this motion because what one has to understand is that you have reached a stage, when this would become operative, of proving unconscionability. All you are doing now is giving the person who has already proved unconscionability the opportunity to demonstrate to a judge that posting security, having regard to all the circumstances, would not be necessary.

What more protection do you need? Why will you not trust judges to try to help people who have overcome the first hurdle? That is why I think this is a good amendment and I think the government should support it.

**Mr Wessinger:** I would just like to clarify something. I think there is a misunderstanding about when the security applies. The security only applies in the event of consent of the parties. The security does not apply in the question of unconscionability.

**Mr Elston:** There is no misunderstanding about that. We went through a whole pile of hoops to get this far.

**The Chair:** Further discussion? All in favour of the motion?

**Mrs Mathysen:** Mr Chairman, could we have a 20-minute division please?

**The Chair:** We will resume at a quarter to 5.

The committee recessed at 1623.

1643

**The Chair:** At the point we left off, the government whip was requesting a 20-minute recess, so we are now at a vote on page 29.

**Mr Elston:** Can I inquire, Mr Chair, do members of the New Democratic caucus feel better now? Will we feel better?

**Mr Fletcher:** Yes.

**Mr Elston:** Oh, good.

**The Chair:** All in favour of the motion on page 29? Opposed?

Motion negatived.

**The Chair:** We move now back to pages 24, 25, White 24, and 25.

**Mr Elston:** Just so that I am clear, what amendments have taken place to this?

**Clerk of the Committee:** What is on the floor now is 24 and 25. It has been amended by page 26a gold and page 26b gold.

**Mr Elston:** I would just ask you to read how it is amended. Can we do that?

**Clerk of the Committee:** Reread the whole thing?

**Mr Wessenger:** Or could we just reread the amendments? If I might just point out for clarity, I think if we look on page 24 at the bottom where it says, "unconscionable, determination", number 1 set out there is deleted, and I will read what was substituted for it, which was on page 26a: "The fact that the payor has demonstrated a good payment history in respect of his or her debts, including support obligations."

**Mr Harnick:** That goes in instead of number 1 that is there now on the white page?

**Mr Wessenger:** That is right.

**The Chair:** That amendment to the amendment has already passed?

**Mr Wessenger:** Yes, it has passed.

**The Chair:** And 26b?

**Mr Wessenger:** In that case, it is an addition on page 24, number 4, and that addition is: "The fact that there are grounds upon which a court might find that the amount payable under the support order should be varied." That was added to subparagraph 3.

**Mr Elston:** I think we should have the parliamentary assistant go over the rationale behind this wholesale change of 3d. I know it was moved. I am not sure that we had his explanation. I think we went directly, as I recollect, into the amendments of the section by our motion. So if the parliamentary assistant can tell us a little bit about this smoke-and-mirror section. The PA giveth, so to speak, and the PA taketh away might be another description. Perhaps we would be at liberty to consider voting on this.

**Mr Wessenger:** Perhaps if I might—originally, as set out in the bill—

**Mr Elston:** Here commenceth the reading.

**Mr Wessenger:** Yes, I am trying to see the changes from the bill.

Interjection.

**Mr Wessenger:** Oh, it is already in the bill?

**Clerk of the Committee:** The bill was reprinted.

**Mr Wessenger:** Is it the same as 24?

**Clerk of the Committee:** Yes.

**Mr Wessenger:** Basically, the purposes of the amendments are to define or limit what "unconscionable" might mean. So we have these additional items (a) and (b). Yes, that is the addition, that certain items are not deemed to be unconscionable—subparagraphs 1, 2, 3 and 4. That is as it varies from the bill as originally presented.

**Mr Elston:** I am sorry. I have an old bill, not the one that has been reprinted. That is why I could not find all this stuff in one place. Can we get a copy?

**The Chair:** Mr Elston, in referring to the older copy, is quite correct. The committee, in my understanding, should be referring to that copy until the amendments—

**Mr Elston:** It is okay. I just was using an older copy and I did not see it all reprinted.

**Mr Wessenger:** It is all reprinted.

**Mr Elston:** In the copies you have?

**Mr Wessenger:** In the copies I have it was reprinted, yes.

**The Chair:** Mr Wessenger, the rationale?

**Mr Wessenger:** The rationale basically is quite interesting. What we said is, the following shall not be considered by a court to determine whether it would be unconscionable to require a payor to make support payments to a support deduction order.

We have in effect stated certain items that cannot be considered and those are the payor's payment history, the fact that the payor has had no opportunity to demonstrate voluntary compliance, the fact the parties have agreed and the fact that there are grounds upon which a court might find that the amount payable under the support order should be varied. I might add that these items are there basically for the purpose of clarification rather than for the purpose of changing the intent of the original section because—

**Mr Elston:** "For the purpose of elimination" might be—

**Mr Wessenger:** —the normal definition of "unconscionable" is something that—I forget the phrase now.

**Interjection:** "Shocking to the conscience."

**Mr Wessenger:** "Shocking to the conscience." I think the four items we are saying are not to be considered in most cases would not be considered shocking to the conscience, at least in my opinion. However, it is there for the purpose of clarity. The question of what is unconscionable, I know has been asked. There may be particular circumstances where—

**Mr Elston:** Like? Can you enumerate any circumstances?

1650

**Mr Wessenger:** There is only one that has been thought of.



**Mr Elston:** Would you bring that forward for my consideration. I must have missed it.

**Mr Wessenger:** I do not know whether it has ever been given.

**Mr Elston:** Please bring it forward.

**Mr Wessenger:** The only one we could think of is a situation where there might be a child and there would be a reason you would not want that information disclosed to the employer.

**Mr Elston:** A secret identity.

**Mr Wessenger:** A secret identity question, yes. That could be a possible situation.

**Mr Elston:** And that is the only situation where you can see that this section on conscionability would be passing the test for a judge.

**Mr Wessenger:** I am sure there might be others, but let's put it this way, that was an example.

**Mr Elston:** Just so that we are clear, there are no circumstances, except with one possibility, that the public interest may be overridden, at least overridden to protect the identity of a child from an employer who had made the deduction. That may be a reasonable issue of unconscionability.

**Mr Wessenger:** I am sure there might be, there are always situations which arise that are not anticipated. I think that is something we should be aware of, that there will always be something coming up that would be considered shocking to the conscience.

**Mr Elston:** But Paul, is it not interesting to note that you have given a whole section to delineate what is apparently a route out of the support deduction order. There are almost two pages of this section 3d as it sits here. Really, what you might just as well have said to people is, "There is no way out of this, men and women of Ontario, you are in up to your ears if you separate."

**Mr Wessenger:** I think, though, there is another aspect behind this whole unconscionability thing which should also be mentioned, and that is the fact that there may be—

**Mr Elston:** This is really illusory, you know.

**Mr Wessenger:** I think there is a certain advantage of leaving to the court the question of determining—

**Mr Elston:** You did not leave it though; you did paragraphs 3d(3)1, 2, 3 and 4.

**Mr Wessenger:** No, and in our opinion we have not tied their hands. These are items that would not be intended to be included in unconscionability in any event. It is for the purpose of clarity for the courts.

**Mr Elston:** No, it is to prevent some judge on her or his own wicket running out and saying, "I think it is unconscionable in the circumstances since it has been shown that..." You are basically saying to that person that she or he cannot decide that 1, 2, 3 or 4 had any bearing on the issue of unconscionability.

**Mr Wessenger:** That is correct, those four are not—

**Mr Elston:** You are tying their hands and you are eliminating the one item you have just now raised for our own

interest about what would pass the test of unconscionability perhaps.

**Mr Wessenger:** I think you could be broader than that and say where—

**Mr Elston:** I am sorry, Paul. I mean, why are we even going through all these sections? If you want to protect universality—and I am getting back to my "reasonable" test again—if you can only afford to buy your way out of this thing after you do unconscionability or you get consent, if you have to buy your way out of this, I mean, this is just travesty. We should tell people up front there is no way men and women of Ontario can get out of this section at all because that is really the test.

You are going to ask judges to hear submissions from people trying to crack the unconscionability barrier to begin with. First of all, they are going to have to have consent. Presumably that will be the primary point. I am not even going to try it if there is not going to be consent from the other side because let's face it, even if they pass the test with the judge, without the consent of my client, for instance, who will then go and say, "I want this order acted on by the director," it seems to me they are going to be out of time.

**Mr Wessenger:** No, I think the fact is that unconscionability comes in when there is not consent.

**Mr Elston:** But can you tell me then that a judge, on his own wicket, is going to say it is unconscionable that this take place when the payee is telling him he requires the support deduction order to be acted upon?

**Mr Wessenger:** I think that would depend on the evidence. I think there could possibly—

**Mr Elston:** Come on, Paul, you are a lawyer and you know how these people act.

**Mr Wessenger:** I think it is fair to say there will be a few unique cases.

**Mr Elston:** This is then going to pad the bills for some legal people.

**Mr Wessenger:** I agree with you it is going to be a rare occasion.

**Mr Elston:** Almost non-existent.

**The Chair:** No further discussion? All in favour of the motion?

**Mr Elston:** No, no. We just discussed the part of section 3—

**Mr Wessenger:** The unconscionability concept.

**Mr Elston:** —that is the unconscionability concept. I might ask that we pursue this section as a whole.

**Mr Wessenger:** I think we have dealt with the unconscionability aspect. The next aspect we deal with is the question of security, and as I indicated earlier, four months was the amount we felt would be necessary to buy payments to the income recipient, during the period in which it would take time for the branch to get its enforcement procedure under way. It provides security of payments for at least four months to an income recipient.

**Mr Elston:** I know you did not before, but can you respond to my issue about the fairness of that, asking people

who usually or often find themselves in financial difficulties, to pay four months without the opportunity for someone to bury that amount.

**Mr Wessenger:** I think it is a questionable balance, really, between the interests of the recipient and the interests of the payor. The decision has been made in this instance to be balanced on the question of providing security for the recipient.

**Mr Elston:** Will the money stay as a whole in a four-month lump sum with interest accumulating, I hope, until such time as the support order ceases or the support deduction ceases to exist, and then be paid out on a court order?

**Mr Wessenger:** We do not know the exact details, but we understand right now that there are some instances where money has been paid as security, and in these instances interest is paid to the person posting the security.

**Mr Elston:** At what rate?

**Mr Wessenger:** I will ask the director.

**Mrs Mills:** At the moment there are one or two cases. In the Toronto office where security has been ordered by the court—and there are differing circumstances—in one case, the account is with the bank in the name of the payor. It is a non-chequing account. The interest rate is the going rate for that type of account at the bank. It is credited to the trust account in that particular name.

**Mr Elston:** Let's just say, under some interesting circumstance—I will take it and probably stretch it about as far as I can—that a child of a marriage is quite young. You can then consider upwards of 21 years of operation of this account, presumably just dealing with the support deduction order covering the child, presumably saying he complied. You could have a four-month payment made at the time, that is on deposit with the government of Ontario, accruing interest for 21 years or as long as the support order takes effect, without paying any interest to that person at all—or will it be allowed to run for ever?—or until the support deduction order is cancelled and the order for payment out is made by the court.

**Mrs Mills:** Those details, as I said, will have to be looked at in the scenarios of what could happen, whether there will be some payout or whether it will stay in the account.

**Mr Elston:** Are you not drafting the regs? I understood that you would be doing some drafting of regs between the time that we broke off here in February and now. Are the regs not going to cover the fact that you do not want to have somebody with four months-plus of interest running for 20 years or whatever?

**Mr Wessenger:** I would agree, that would be a matter that should be in the regulations.

1700

**Mr Elston:** No, they did not just say that word.

**Mr Wessenger:** Yes, we have to look at it. Yes, it is a complex situation for the simple reason that the support order will go up with the cost-of-living increase. There will be interest credited and obviously the question is of the differential. If there is a higher differential from interest credited than the cost of living increase, then—

**Mr Elston:** So then the suggestion you just made to me is that if the cost of living is beyond the rate of interest credited to the account, you may ask the person who is outside the support deduction order—

**Mr Wessenger:** No. You have no right to do that.

**Mr Elston:** Are you sure?

**Mr Wessenger:** Yes.

**Mr Elston:** Because you are in violation of the act. There is no right to allow a person under the order unless there is at least four months' deposited security on hand. Right? Right.

**Ms S. Murdock:** At the time of making of the order.

**Mr Wessenger:** At the time of making of the order.

**Mr Elston:** Only.

**Mr Wessenger:** Yes.

**Mr Elston:** Okay, but then your answer—

**Mr Wessenger:** The order is standard at the time.

**Mr Elston:** —to the first part of the question would not be accurate. It would not matter what the cost of living was, he would only be required to keep on hand the four months at the time the order was first made. Do not try to keep money and then say you are not going to be doing the other side of it, because I tell you, if you have to have at least four months' payment, you have to be very precise about whether or not the interest is to be credited to keep the balance of four months in good standing, or whether you are to pay out the surplus above the four months at the original time or indeed at the time the determination of the size of the trust account is to be made.

**Mr Wessenger:** Yes. You have raised the issues that really have to be worked out in the regulations.

**Mr Elston:** I am available to be a consultant, but this is what we had to do, we had to do some of this stuff before we got this far along, to be fair. Some of the systems stuff has to be done and there have to be allocations; I presume there has to be a request for allocations.

**Mr Wessenger:** I think that is fair. That is also why there is a fair time lag in—

**Mr Elston:** But do you not understand?

**Mr Wessenger:** —passage and proclamation.

**Mr Elston:** The point I am trying to make is, the manner in which this thing is administered makes it either fair or, to use the current phrase, unconscionable. The manner in which we require people to leave money on deposit in a trust account with the government makes this thing less or more fair, or indeed, even unconscionable. Is that an issue the judge will take into account, that it is unconscionable to have somebody with a deposit with the government for four months?

**Mr Wessenger:** No.

**Mr Elston:** Well, I will tell you, if they cannot afford to keep their house or they cannot afford their way to work, is that unconscionable or not?

**Mr Wessenger:** The only thing I will say, Mr Elston, is that the issues you raise are being looked at in this regulatory aspect.



**Mr Elston:** Well, that is one thing.

**Mr Wessinger:** I am assured they are being looked at. I had better say that.

**Ms S. Murdock:** This section is strictly for those people who are asking for a suspension of the support deduction order.

**Mr Elston:** That is correct.

**Ms S. Murdock:** Mr Elston's words, "buy your way out," pay four months as a security, at which point they no longer are paying per the support deduction order; they have their own arrangement or whatever with their spouse—ex-spouse.

**Mr Elston:** That is right.

**Ms S. Murdock:** You are making it sound as if anybody put this four months down.

**Mr Elston:** No, no, I want to be quite clear. I want to be absolutely clear. I spent a lot of time talking about the fact that this whole section is an illusion, that it is a smoke-and-mirrors thing. I am saying to you that if you are going to have this—and it is, in my new word, unconscionable to say to people, "You must pay the four months"—there are a bunch of people who can afford it and there are a similar bunch of people who cannot afford it. That is my problem. If you have no leeway to make a reasonable assessment of what people should have on deposit as security, in regard to their circumstances and in regard to the number of people they are required to take care of, then that is what makes this thing an offence, and the manner in which it is going to be administered can make this whole section an offence.

I agree with your final submission, but there are very few people who are going to be able to use this exit opportunity. Those people who do use the exit opportunity are going to be afflicted with a deposit of some dollars with the government over an extended period of time and that is unconscionable, in my view. We talked about that part. Is there any other section here? We have subsections 3d(5), (5a) and (5b). Is there anything else you want to say about those?

**Mr Wessinger:** Subsection 3d(5) would clarify that the parties themselves are responsible for all court applications with respect to support deductions. There is a single exception, and that is where the administrator has applied support deduction to an existing case.

**Mr Elston:** I notice white subsection (5b), which I presume is the case because we do not have the other, says, "If the payor brings a motion under subsection 3k(6), the director must also be served with notice of the motion and may appear." Can I ask what the interest is in having the director appear at a suspension order? What interests is the director representing?

**Mr Wessinger:** Perhaps I will refer that to the staff.

**Ms Feldman:** Section 3h, or what was formerly 3k, deals with the application of support deduction on existing orders. Insofar as the director may elect to apply support deduction on those orders as a mode of its enforcement activity, the director, who has exclusive jurisdiction over enforcement, would be interested in the payor's application for suspension of that support deduction.

So in those situations, before the director can proceed with support deduction on existing orders, the payor gets notice that the intention is to apply for support deduction and the payor has 30 days to bring a motion to suspend support deductions. Since it was the director who decided to take the step to apply support deduction and notify the payor, then it makes sense that the director should be notified of the payor's motion to suspend that support deduction order.

**Mr Elston:** When would the director choose not to appear, since it says "may appear"?

**Ms Feldman:** Well, for instance, there might be a situation where the director thinks support deduction is an appropriate mode to enforce a particular order but the parties themselves have reached consensus. They agree that support deduction not be applied and that security is going to be posted. In that kind of situation it may not be necessary for the director to appear. Instead, the director will take the posted security and there will be a suspension on consent of the support deduction order. That is one of the examples I think of.

**Mr Elston:** That is again a pretty rare sort of situation.

**Ms Feldman:** Not necessarily. I mean, perhaps we just do not know at this time whether it will be rare or not, but that would be the type of situation where the director will elect not to appear on a support deduction suspension motion.

Motion agreed to.

**The Chair:** Okay. We move back now to subsection (10). We have to have unanimous consent to open (10). The amendment is on the yellow page that was handed out. Mr Wessinger.

**Mr Wessinger:** As I said, we need unanimous consent. This is the response to the point raised by Mr Sorbara yesterday when he indicated he felt there was a drafting problem, and upon further reflection it was accepted there was a problem and additional words have been added to the section. The words are "the support order has not been filed in or." Those are the words that have been added.

**The Chair:** Do we have unanimous consent to open subsection (10) for the purpose of the deduction—

**Mr Elston:** Mr Chair, I am sorry to do this. I know you are just responding to Greg's request. Since he is not here and there was an anticipation that you might be back doing this today, I wonder if we could share this with our colleague before it is moved. Otherwise I guess we have to talk out the clock or something.

1710

**The Chair:** So are you suggesting that—

**Mr Elston:** Until we can usefully go on with other sections, in fairness—

**The Chair:** Are you suggesting that we stand this aside until Mr Sorbara is present?

**Mr Elston:** Please.

**Mr Wessinger:** I have no objection.

**Ms S. Murdock:** We do not have any objection. That is fine.

**Mr Elston:** I am not a member of the committee so I cannot object in that fashion but it is Mr Sorbara's question.

**Mr Poirier:** I think it is only fair that we leave that for Mr. Sorbara when he is coming in.

**The Chair:** Failing 10a, we are on page 30—

**Interjection:** We are on 30 replacement; we are on gold.

**The Chair:** We are on gold, which is 30 replacement.

**Mr Wessenger:** My motion, then.

**The Chair:** Mr Wessenger moves that section 3d of the act, as set out in section 3 of the bill, as printed, be amended by adding the following subsection:

“(10) An order suspending the operation of a support deduction order does not affect the payor's obligations under the support order or the enforcement of the support order other than through a support deduction order.”

**Mr Elston:** Just before we get to this again, the last amendment dealt with subsections 3d(1) through (5). We have not yet then dealt with subsections (6) through (9), is that right? Is this an amendment to subsection (10)?

**The Chair:** There are no amendments to those sections.

**Mr Elston:** Okay, but do we not have to carry the section as a whole?

**The Chair:** Yes.

**Mr Wessenger:** This amendment further clarifies that the suspension of the support deduction order does not prevent enforcement through some other means. Although this was the original intention and was implied, it is now clear. So it is really felt that it nails it down.

Motion agreed to.

**The Chair:** We will now be doing 32 before 31. Mr Harnick, page 32. Oh, I am sorry, Mrs Cunningham was wishing to be present for that.

**Mr Carr:** Yes, she is coming.

**Mr Mills:** That is 31 what?

**The Chair:** No, we are on 32, and Mrs Cunningham is wishing to be present.

**Mr Carr:** She is supposedly coming up. Five minutes should do it.

**The Chair:** Okay, I suggest we set that aside until Mrs Cunningham can be here to discuss it.

**Mr Harnick:** Yes, in light of the last amendment which added number 10, each of these should now be number 11, 12 and 13. Okay?

**The Chair:** On page 32, if we can just make those slight changes on the paper: 10 becomes 11, 11 becomes 12 and 12 becomes 13.

The clerk suggests that we can go to page 31.

**Mr Poirier:** moves that section 3 of the act as set out in section 3 of the bill, as printed, be amended by adding the following section:

“3da(1) The director shall suspend the operation of a support deduction order if the payor has not defaulted under the order at any time during such period as is prescribed by the regulations.

“(2) If the payor fails to comply with the support order after the operation of the support deduction order has been

suspended, the support deduction order is automatically reinstated.”

**Mr Poirier:** Not bad for my second language, eh?

**The Chair:** Excellent. Would you like to speak to that, or Mr Elston?

**Mr Elston:** Do you want me to speak to it, Jean? We talked about this issue when the presentations were being made. I think in earlier parlance it was described in the AG's department as the kick-out clause or some such thing. It basically allows people to say, if there has been compliance over a substantial amount of time, let's move on and allocate our resources to enforcing the people who are hard to get at.

The issue is quite clearly one of whether or not you are willing to release the good-statistical-compliance people to perform on their own or whether you want to deal with the universal group. There is not much secret, I think, that we believe there will be very little success or opportunity for this amendment because this is considerably more controversial in many ways than the request for having some reasonable exit opportunities for people.

All this says is that if people have been making the payments over an extended period of time, then get them out of the system. Apply the resources to the tough-to-get-at cases. In fact, the director having an acceptable amount of resources currently at her disposal might very well decide to say yes to trying to enforce a couple of the difficult payment questions, whereas at the current time she would have a lack of resources to go after the harder-to-enforce.

Remember that with the regime we have set up here, there is discretion on the part of the director to say that it is not practical for her to follow up on certain difficult payment issues. The ones that, in terms of policy, we really would wish to pursue with the most earnestness would be those cases where there has been not only a failure but in some cases a refusal, and in other cases a downright conspiracy, to avoid making the payments to people who are in need of support. If we can do anything that allows more efficient allocation of funds, ie, taking the resources out of following up on good people—I have described them as good people and I hope you know what I am referring to—as opposed to following up on the really bad sort of folks, then I think you are going to get better results.

We have to know now that no matter what we say about the manner in which this scheme is designed to perform, there will be a lack of resources to perform well when it comes to those cases which are most difficult to enforce: the follow-up after the person who absconds from the area—absconds sounds like they are taking something with them; they may be or they may not—the ones who run away from their obligations.

I think those are the people for whom this legislation ought to be designed primarily, and anything that we can do to ensure that the director has some discretion to reallocate her resources so that she can follow up on those hard-to-get-at people, I think, is rational.

I have no illusions—because I think my other amendments as suggested were easier to consider in the context of the position of the New Democratic Party—that this



particular amendment has any opportunity of passing. I want to put it in these terms merely to demonstrate that there are very difficult choices to make about the allocation of resources, because, believe me, there will be insufficient funds allocated to follow up on the toughest cases. You and I will receive as members, and the Ombudsman's committee—maybe not the committee but the Ombudsman herself—will receive concerns about how the director has exercised her discretion in refusing to enforce a support order.

The issue that really brings this suggested 3da amendment to the fore is only for you to consider the fact that you cannot do everything for everybody; you have to make the hard choices. The hard choice you have to make here is to allocate resources being used to follow up on the good ones, the ones that do not necessarily have to chew up any resources at all, in favour of following those people who are hard to get after.

That is all this is here for. It is to remind you of your choices and it is to remind you that you are going to suffer some failures under the regimen that is established by this bill.

I think you could have helped yourselves quite a lot by accepting some other less, sort of, threatening amendments. I am quite well aware this one threatens universality to a greater extent than the other ones that allowed a judge in her or his discretion to play some role in deciding when a support deduction order should or should not be in place.

1720

Having brought that to the fore, I can anticipate the vote. But I just lay that on the table for you folks, because sometimes we let our personal views associate it with the heinous acts of the most recalcitrant, the most unsavoury of the subjects of this. We forget about the people who, despite the fact that there are separations and in fact there are divorces, still are very reasonable and law-abiding and responsible individuals. Maybe from statistics they appear to be very much in the minority, but that is not the issue. The issue is, how are you going to demonstrate some sense of priority if you are allocating money to chase the good ones who would comply anyway while you are allowing the director discretion to say, "I'm sorry, it is not practical, madam, for me to follow that person and give you money"?

That is why this is here, and I want you to think about it seriously. Then perhaps when we get to committee of the whole House, we can maybe reassess some of the other, more rational and less threatening amendments, because I understand this is irrational when you compare it to the stated purpose of universality that you have already talked about; but there are some more rational and less threatening amendments which you might consider doing a better job on and in fact accepting when we get into the House.

So that is the story of this amendment and that is what life is about: the tough choices and where you are going to allocate the resources. I know I am not going to get this, but I would like to see the request of the Attorney General to the Treasurer and policy and priorities board and the Premier with respect to their full request for funds, including this area, and then I would like to compare it to what they actually get. Because it is the duty and obligation of the public servants who are going to be talking to us later

when we do a review of this legislation and its workings that—"of course there was a reasonable amount of resources allocated to us. And we are quite happy"—as they cross their fingers—"to be doing such a good job with what we got."

Motion negatived.

**The Chair:** Mr Harnick, the motion on page 32.

**Mr Harnick:** Mr Carr will be bringing that motion.

**The Chair:** Mr Carr moves that section 3d of the act, as set out in section 3 of the bill, as printed, be amended by adding the following subsections:

"(11) Despite any other provision of this section, a court that makes a support deduction order shall immediately suspend its operation if the payor requests the suspension and agrees to pay to the director the amounts owing under the support order to which it relates and the court is satisfied that the payor is likely to make the payments.

"(12) A suspension order referred to in subsection (10) is terminated if the payor, without an explanation that is acceptable to the director, fails to make a payment under the support order when it is due.

"(13) The support deduction order is reinstated when the suspension order is terminated under subsection (11)."

**Ms S. Murdock:** Mr Chair, under the margin note "termination of a suspension" order within subsection (12), there is a reference to subsection (10) which should be (11), right?

**Mr Revell:** May I make a suggestion, Mr Chair?

**The Chair:** Yes.

**Mr Revell:** It would be unclear to refer to the motion as printed; if the motion passes, we will fix all of this editorially on the reprint.

**The Chair:** Thank you.

**Ms S. Murdock:** Okay. So it stays 10?

**The Chair:** We do not have to worry about the numbers. As printed, it will be fixed up.

**Ms S. Murdock:** So it stays (10), (11) and (12). Boy, I will tell you, if this thing passes—

**The Chair:** Would you like to speak to your amendment, or Mrs Cunningham?

**Mr Carr:** Maybe I will go first, if I could, and I will be fairly brief on it. In sitting through a lot of the discussions—and I guess we have gone around this a little bit, because most of the Liberal motions talked to the same principle—what we are hoping to do is focus on those people who really need to be focused on.

I guess the big fear I have is looking at some of the other programs, whether they be WCB or rent control or the court backlogs. If we put people in the system who would otherwise pay, what we end up doing is actually clogging the system. I go back to the principle of what this bill is all about, which is really to help the people, particularly the children, who need the money. It does not threaten the universality. We were very clear on what we put in there: if you missed just one payment. And I guess it is my feeling that once this program comes in place and people know that there is going to be, for want of a better word, some

tough legislation, we are going to get a lot of people to come into it who otherwise might not have paid in the past because there was no enforcement mechanism. They will realize that the government is not kidding any longer, that they will have to make their payments, and I think from that standpoint it is good. However, there are going to be some people who we would like to see pay directly on their own.

Looking at some of the statistics that we have on the people who were in compliance and the ones who were in arrears, when we get into it, as we did during this debate, we find that some of the arrears could be classified as arrears even if there was a problem with the old SCOE department. We look at the statistics. You are going to see that with no packages filed, there is a very high percentage that will not be included. When you really get down to it, we are talking about a system of trying to help those people who, for want of a better word, have never lived up to their obligation. So what we are saying is you should have the chance to pay willingly on your own.

I do not believe this threatens universality. What we are trying to do with this for those people who wish to pay, is allow them a chance to get out. One payment missed, one lousy payment missed, they would then come into the system. I think we tried to be fair, looking at what the overall objective of the Attorney General was, and listening to him very clearly. There were those who said, "Well, it should be three," or two or whatever. We said: "We are going to try to give a little bit. You miss one payment and you fall out." So we, I guess, tried to extend a hand on this, to work in the spirit of compromise. I really do not believe that by passing this motion we are going to prevent any children from getting the money they so desperately need. What we have attempted to do, along with some Liberal amendments, is put the opportunity there so that the system does not get clogged.

We have no way of knowing what is going to happen a year from now. I think during her testimony the director said they hoped to have the backlogs cleared up and operating and to be up to efficiency some time early next year. My big fear is that we will not, that by putting people in the system who do not need to be there, we could be very well sitting here the same time next year wondering how we are going to clear up the backlog, like we are going to do when the justice committee gets into the court backlog. In fact today we heard the Attorney General talk about how some of the systems are going to be cleared out in the court backlog. I think it is the same, we are going to be putting people in the system who need not be there. This does not jeopardize universality; when we worked on putting this amendment together, we really did try and move closer to what the Attorney General wanted.

1730

The big fear I have is that this whole process has been for nothing, that we are not going to get this amendment passed and that all the hard work and all the submissions that have come through will be for nothing. As my friend Mr Sorbara said yesterday, if you could just point out to me how this would affect the overall thrust of the bill, I guess I would be prepared to pack up my toys and go home.

**Mr Mills:** But he did not.

**Mr Carr:** I failed to see it yesterday in that case, and I think with this amendment we are in the same boat, but hopefully at some point somebody on the government side will explain the rationale for defeating this amendment, because I think it is very clear it will be defeated, which, as a rookie, naïve politician, I guess is a little bit frustrating. I went through this process thinking that with all the hard work and all the nights we stayed up, there would be something that would change as a result of some of the work, and in fact we spent a lot of time working on these amendments for this motion. Charles being a rookie too, I guess we figured there might be some chance the government would listen. I guess I have been a little bit discouraged by the process, but we will see. Maybe it will pass, but I would hope that somebody, and it might be the parliamentary assistant, if they are going to vote against this, would go through it one more time for me to explain how this would defeat the major thrust of the bill.

I think, if I could now, I would leave it at that. I would hope one of the government members could speak up—probably it would be best for the parliamentary assistant—and then I would feel more confident knowing that there is some rationale behind this. I hope somebody will speak on it, and if not, I hope you will listen when my colleague Dianne Cunningham gets a chance to outline it as well, because we spent a lot of time agonizing over how we were going to word it. We worked with the legislative counsel and I hoped there would be some consideration given to this.

**Mr Harnick:** Section 3d essentially takes any opportunity away from individuals and away from the court to have a support deduction order tailor-made for their circumstances. What it does is treat everyone the same way whether they can afford it or not. It makes the opportunity to get out of the order virtually impossible, and as Mr Elston said earlier, it is weighted in favour of those who are wealthy and can afford it as opposed to those who cannot.

Universality in matrimonial dispute litigation is the most nonsensical thing I have ever heard of. You are doling out matrimonial remedial justice the same way you want welfare delivered, and I would urge the members of the government on this committee to take a hard look at what they are doing by this legislation to families that are, in most situations, already bitter. You are increasing that sense of bitterness, you are increasing the degree of strife that is already there, and by doing that you are making the other aspect, custody, which this bill does not talk about, even more contentious. You should be looking to lower the level of strife and help people walk away from their situations with some shred of dignity. You are making that impossible.

You have shown by this piece of legislation that any flexibility is unwarranted. You have shown that you do not trust the potential individuals who come before courts in this situation, you do not trust the judges who have to adjudicate upon these situations, and you refuse to allow every case, and they are all different, to be determined on its own facts.



You have also, by meting out justice in the manner you have set out in this act, made an adjudication at first instance impossible and hence the opportunity to appeal, which is a basic right of every individual, absolutely meaningless. You have applied the workers' compensation meat chart to the area of support legislation.

You have also compounded a situation that already exists, and that the Attorney General has already acknowledged, that the SCOE office has an abundance of claims already in the system. It is difficult to administer those claims, and you are now going to force 25% more claims into the system than you need, all because you refuse to trust anyone who has indicated by his or her past history, which again has been taken away from a judge's determination, that he is able and willing to make the payments that he is obligated by law to make.

You have created a situation where people will be doing their utmost to try to avoid the system. They will run and they will hide. Experience has shown that you have not been able to find them under the old system. You will not be able to find them under the new system, and there will be more whom you will be looking for.

So I would urge the government members on this committee to look at these amendments and to inject into this bill by way of some of these amendments some flexibility so that this act will work and children will receive the support they need so that they and their custodial parent can live with dignity. Unless you make this act less restrictive and more flexible, you are prohibiting that from happening.

**Mrs Cunningham:** Mr Chairman, if you would permit me to make a few comments, as having participated earlier in the committee hearings rather than running in during the clause-by-clause. I guess one of the weaknesses of the system is that from time to time we have to share responsibility, so I hope you will understand I am not trying to come in here and take up time, but to get on record my concerns as I see them from having been a participating member of the committee during the public hearings, which I feel is probably the most important part of our democratic process at Queen's Park.

In those public hearings, I would like to remind the government members, and certainly the representative of the minister, the clause that in fact received the most attention and concern with regard to implementation was the clause that we are at this point in time trying to amend.

We ask legislative counsel and research people to help us in our deliberations in making good laws in this province. It would certainly make me feel somewhat more satisfied if I knew that we took into consideration not only their work but the views of the public who come before our committee.

On both those points I would like to draw your attention, Mr Chairman, and ultimately—

**Mr Elston:** That will not work, Dianne. We have tried almost everything.

1740

**Mrs Cunningham:** I know. I have been following the deliberations and I think the public of Ontario should be very proud to have some of the representations made on its behalf by the people who have been sitting on this com-

mittee, on both sides, depending on the clauses, but I am particularly concerned about the lack of input on behalf of the government on this clause, given in fact that this was the clause that received the most public attention.

I would like to go back to the beginning of my remarks, and I know that others have made them in a far more meaningful and experienced way than I can because I am not a lawyer, but I am a person who has been heavily involved in mediation, in supervisory and access programs and certainly the families over a long period of time, and I think I understand the nature of this very sad situation we find ourselves in in the breakup of families across this province.

We asked the research service to take a look at experiences in immediate income withholding for the collection of support payments and they advised us of a document that came to our committee in February, a report prepared by Susan Swift, the research officer of the legislative research service, and the paper was entitled Automatic Income Withholding: The Legislation and Experience in Several Jurisdictions. Was this one quoted already in the debate? Well, maybe we can add some new arguments here.

This argument is not anything that any of us should take for granted, other than the fact that we are being advised, based on past experiences, about immediate income withholding in support payments in the United States; and it was as recently as 1984, according to this report, that Wisconsin became the first state in the United States to use the procedure, so the process is fairly new as far as legislation goes.

Please, Mr Chairman, if I make any remarks that have been updated since I have done my work, I would appreciate being corrected by anyone, because I want to make certain that what I am saying is correct and that the minister takes due note of the Hansards on all of our behalfs.

It says here that, "It initially adopted immediate income withholding on a pilot project basis, making it a mandatory state-wide procedure in 1987."

I was very interested in the results, because I, like this particular government and the government before this government—I should say governments before—have never been happy with the statistics in this province.

It goes on to say that, "Other states have followed the Wisconsin lead and now more than half the states have implemented immediate income withholding." I would say, in interest, on what grounds, because we are about to do it here.

"Congress recently enacted legislation requiring all states, as a condition of future AFDC funding (general welfare funding) to adopt immediate income withholding in all cases. This requirement represents a change from 1984 federal legislation which had mandated income withholding only if the payor was in default of an amount equal to one month's support.

"Australia has also recently adopted immediate income withholding. It is apparent that the procedure is being used increasingly," and now we are falling into the trend, we might say.

"Unfortunately, except for Wisconsin, there appears to be very little assessment of the effectiveness of immediate income withholding. The experience may be too recent to

have given rise to these types of studies. Even where evaluation has taken place, it is not a pure evaluation of immediate income withholding, because often other reforms have been implemented which would have an impact on the results."

I raise that as a caution, and I believe that, because there have been no conclusions that I can support, in the interest of families in the province of Ontario. I would raise the flag certainly to this government, and say that, since we have very little assessment of the effectiveness, is it really worth taking this tremendous step that is being contemplated by the government right now?

I think everyone on this committee agrees that we have to improve the compliance with support orders in this province. There is no doubt. At the same time, I think that we have to do it in a fair way.

I commend the government for taking a look at this as one part of a very big problem in terms of the challenges that families face at this difficult time. I just raise that as a caution. There is definitely no assessment of the effectiveness. So if any of you are saying that this will improve the statistics, I would advise you that you have been given this information by the research people here and you do not know if in fact it will.

You are hoping of course that it will. Then I would say, at what risk? If in fact this was a piece of legislation that we should have been looking at in any particular order, or this government should be bringing forth in any particular order, based on some plan with regard to support and custody, support payments, all the challenges we face in our court systems, the ineffectiveness that we share and know about as elected representatives of the SCOE offices, certainly we have had enough information come before this particular committee now and under the previous government to give us some good advice on what we should do first. It amazes me that this bill would be the one the government should choose to bring to the attention of this Legislative Assembly. It is not the one that I feel it should have brought first, and if it was brought at all, it should have been brought as part of a package.

The Attorney General is well aware of the research and the advisory committee's work on mediation and family law. The taxpayers in the province of Ontario spent a lot of money giving us some good advice. The recommendations of this particular report that were not raised—did I say something funny or is something—

**Mr Mills:** No, we are looking at the TV.

**Mrs Cunningham:** Oh, that is funny.

**The Chair:** Mrs Cunningham, go ahead, please.

**Mr Elston:** Independent minded.

**Mrs Cunningham:** Independent minded.

**The Chair:** On behalf of the committee, I should apologize for our distraction.

**Mrs Cunningham:** I should have guessed that may have happened, but that is all right. I was thinking it was one of the other members who has a very smart-looking tie normally. Who is the member who sits close to Mr Rizzo who dresses to get your attention?

**Interjection:** Mr Perruzza.

**Mr Fletcher:** Peter?

**Mr Harnick:** Kormos, that is who it is.

**Mrs Cunningham:** Yes, that is who it is. Maybe we should put it in Hansard and present it to him tomorrow.

**Interjection:** The Italian caucus.

**Mrs Cunningham:** Exactly, the Italian caucus. Are people wanting to listen to the member?

**The Chair:** We have barely enough time to listen to you, Mrs Cunningham.

**Interjection:** I bet he is one of theirs.

**Mrs Cunningham:** I thought I was doing a pretty good job. I cannot believe that that boob tube is taking away from the presentation.

**The Chair:** Were you finished?

**Mrs Cunningham:** Let's go back to what I was going to say.

I feel that the issue we are trying to deal with, this whole issue of family law, of the quality of family life, of supporting families during times of separation and divorce, is a very serious one for our province and certainly one that all of us as legislators want to deal with in some way, but that does not always mean that the best remedy, the best support that we can give families would be in fact in making more laws, in putting more roadblocks in their way.

In the case of Bill 17, it is presenting a significant portion of parents who right now are paying their support custody and have a record of doing so, or some in the very near future who may find themselves in this situation—and one has to just look over one's shoulder in life to know friends and neighbours and family members who are involved; we should be doing things to support these families. If you have a parent who is providing the support, who has a record of providing the support, who in fact has every intention of establishing a good record of support, they should not be interfered with by a law such as this bill, which says in fact—and people will argue this one with me, but I think in the practice of reality, if people are provided with a tool that makes absolutely certain that they are going to get their support payments, even if, by law, their employer has to be involved, with no chance to do it on their own, in the tough circumstances and the emotion of the times, most good lawyers will advise their clients, often the mother, to say, "You've got a tool; use it." That is my greatest fear.

1750

I must say also that in discussing this with the minister not too long ago he did promise me that he would give our—and I say "our" meaning the members of the Liberal Party and the members of the Conservative Party—amendment some consideration. So we find ourselves here, with the minister obviously taken up in the House with the Constitution debate right now, having to present our arguments for this amendment without him being here himself, but certainly with his assistant able to take back our worthy arguments because we will try to get this through. If we cannot in this committee, we will certainly make every effort to do it in the House.



My plea today is that when we get the kind of research that is presented to us, when we know that a lot of work has been done on one of the components of the support system, and the whole report of the Advisory Committee on Mediation in Family Law—and I would just like to read the conclusion, if I can, very quickly. I used to have this thing memorized; I do not have the paragraph. At any rate, the end of this report does say that mediation is something, given the recommendations of the report, that the government should be considering seriously. A lot of work went into it. It was of course the former Attorney General who in fact established this advisory committee, but many members of the present administration who advise this government feel very strongly about the usefulness of this report. As you look through what they say, one piece of legislation cannot stand alone in assisting families. So we should have been taking a look, in my view, at mediation first.

During the committee hearing of the legislation that was withdrawn by the Liberal government—is that the correct term, the former bill?

**Mr Elston:** Yes, proposed. Actually, it was passed; it just was not proclaimed.

**Mrs Cunningham:** That is right. Well, whatever. What was the bill?

**Mr Elston:** Bill 124.

**Mrs Cunningham:** How can I forget? There were many members of the public who came before this committee which looked at Bill 124, and do you know what they told us would be the most useful support that they would see assisting them with family members? They very strongly asked that the government consider programs, and in fact the programs they wanted right across this province were programs that fortunately we in London, Ontario, have: supervised access programs. Many of the presenters, especially the professionals involved in these supervised access programs who came before the committee, pleaded with the government of the day to get on with it, support families, both parents, as they wanted to visit their children, as they wanted to be guided through the whole process of establishing positive relationships once again, as they wanted help and support and advice during these difficult times in their life. Put your money into programs and not into more laws.

So I am surprised, because the government at that time did not listen carefully, with due respect to my colleagues behind me. They were defeated at the polls, not because of that legislation but because of other pieces of legislation where they were accused of not listening. Their greatest objectors at that time in this House were members of the New Democratic Party, and now we find ourselves with a majority of members of the NDP party—strike the word “party” from the record. I have been told 10 times and I will learn yet.

The point is, New Democratic Party members were very strong, both in their support for the advisory committee's work and in their support for putting money into programs, and here we are facing yet another piece of legislation. My great criticism of this committee and its work will be that they did not listen to the public.

On this resolution, more people have made presentations on this particular section of the bill, section 3b I think—

**Mr Harnick:** It is 3d.

**Mrs Cunningham:** —section 3d, you had more input and more good ideas for change, and I expect to hear from the government on it before these deliberations are over. So I say you cannot deal with this issue in a piecemeal fashion. If the government feels it wants to respond on the two issues that I have raised, I would be very happy to hear from it, and I am sure my colleagues would as well, as would members of the government.

In going to the input that appeared in the analysis—and the analysis I am referring to is the summary of recommendations for Bill 17, a report prepared by Susan Swift in February 1991—you can see where the input took place; and I think the staff sometimes, the support people whom we pay in this building must wonder if we ever listen to anything they do or any advice they give us, based on public input and based on research. They spend their life basically trying to advise us. Some days you just wonder if you learn anything from past experience or if anybody ever listens to members of the public.

As supportive as it is of the position I am taking, I know that on top of that you must have received a lot of letters, as I did, many of which cannot be documented. We tried to circulate interesting letters as far as possible. I certainly tried to pass on to our critic, Mr Harnick, anything that I received, and I am sure from time to time Mr Carr would also draw it to the attention of the committee. I would like an opportunity to read into the record just a couple of the letters. I actually have quite a file and these happen to be, believe it or not, at the top, so I probably think they are more important, but I do not really know. It does not really matter; it was all on this issue.

This is one of the constituents whom I represent in London, and there were many of them who appeared before the committee, unbeknownst to myself. It was not something I asked them to do; I certainly did not reach out. They obviously felt strongly enough to come, and I know that Mrs Mathysen heard from them as well, because these letters are all copied to her, as well as my other two colleagues; that is, Mrs Boyd and David Winninger. This one is from Mr Dick, who lives on Doon Drive in the riding of London North, and he is saying:

“The difficulty I have with Bill 17 is that it completely ignores that entire class of honourable men representing the 20% who do make their support payments promptly and in full. These men represent the bulk of the support moneys paid in Ontario. To group this class of honourable men together with the 80% who can't or won't make their support payments...is unnecessary, unjust and even unconscionable. I submit such measures will make for a mockery of the law, failed careers and/or creative evasion—to the certain detriment for many ex-spouses and their deserving children, and the budget of the Ministry of Community and Social Services.

“If you are still unconvinced, please note that since the enactment of the hardball Support and Custody Orders Enforcement Act, 1985 and the creation of the agency known

as SCOE, compliance has actually decreased from almost 1/2 to 20%."

Now the government argues with those numbers, and that is fine. I guess statistics are what you want them to be, but I would suggest that the record has not improved with the creation of the agency. In fact, a lot of the criticism that came from the elected representatives here, and certainly the people who came before the committee, was of that agency and the work it is doing. It is overburdened already; why add to its burden with people who are already paying?

**The Chair:** Thank you, Mrs Cunningham.

**Mrs Cunningham:** Is it 6 o'clock?

**The Chair:** The House is still in session.

**Mr Harnick:** There is a late show; it is still in session.

**The Chair:** Any further discussion on 32?

**Mr Elston:** I may have some comments to make.

**Mr Mills:** She is not finished.

**The Chair:** Mrs Cunningham, I am sorry. I thought you were finished.

**Mr Mills:** You were cutting her off.

**The Chair:** My apologies. I thought you were finished.

**Mrs Cunningham:** Do you want to continue while the House is sitting?

**The Chair:** I thought you could at least finish your remarks and we could adjourn at that point. If the House is still in session, we would not have the capacity to continue debate.

**Mr Elston:** It would be better for the committee, though, if she were to return and provide some more

up-to-date and reasonable and rational remarks for another sitting, but it is up to her.

**The Chair:** Do you have comments as well?

**Mr Mills:** Can I make a comment?

**The Chair:** Mrs Cunningham has the floor.

**Ms S. Murdock:** I believe I have been recognized by the Chair.

**The Chair:** Mrs Cunningham has the floor still and she has not finished her remarks.

**Mrs Cunningham:** I am not finished, Mr Chairman, and I do not think I could finish, in all fairness, in the next five minutes, so it is up to yourself. Obviously there are some people who want to make comments.

**Ms S. Murdock:** It is just that I had made an engagement at 6 o'clock, for which I am late.

**Mrs Cunningham:** Lucky you.

**Ms S. Murdock:** Yes, right, a briefing.

**Mrs Cunningham:** An "engagement," it sounds so exciting.

**The Chair:** Mrs Cunningham would then have the floor when we resume hearings.

**Mrs Cunningham:** Maybe I'll get an engagement one of these days.

**The Chair:** Mrs Cunningham would then have the floor when we resume hearings on Tuesday 2 April at 3:30 or thereabouts. Do we have a motion to adjourn?

**Mr Morrow:** Motion to adjourn.

**The Chair:** All in favour? We are adjourned. Thank you.

The committee adjourned at 1802.



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## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

**Chair:** White, Drummond (Durham Centre NDP)  
**Vice-Chair:** Morrow, Mark (Wentworth East NDP)  
 Carr, Gary (Oakville South PC)  
 Chiarelli, Robert (Ottawa West L)  
 Fletcher, Derek (Guelph NDP)  
 Harnick, Charles (Willowdale PC)  
 Mathysen, Irene (Middlesex NDP)  
 Mills, Gordon (Durham East NDP)  
 Poirier, Jean (Prescott and Russell L)  
 Sorbara, Gregory S. (York Centre L)  
 Wilson, Fred (Frontenac-Addington NDP)  
 Winninger, David (London South NDP)

**Substitutions:**

O'Neil, Hugh P. (Quinte L) for Mr Sorbara  
 Murdock, Sharon (Sudbury NDP) for Mr F. Wilson  
 Wessinger, Paul (Simcoe Centre NDP) for Mr Winninger

**Also taking part:** Elston, Murray J. (Bruce L)

**Clerk:** Freedman, Lisa

**Staff:**

Revell, Donald, Legislative Counsel  
 Roux, Denis, Legal Advisor, Legislative Counsel



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First Session, 35th Parliament

## Official Report of Debates (Hansard)

Tuesday 2 April 1991

### Standing committee on administration of justice

Child and Family Support  
Statute Law Amendment Act, 1990

## Assemblée législative de l'Ontario

Première session, 35<sup>e</sup> législature

## Journal des débats (Hansard)

Le mardi 2 avril 1991

### Comité permanent de l'administration de la justice

Loi de 1990 modifiant les lois  
relatives aux obligations  
alimentaires

Chair: Drummond White  
Clerk: Lisa Freedman

Président : Drummond White  
Greffier : Lisa Freedman

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday 2 April 1991

The committee met at 1557 in room 228.

### CHILD AND FAMILY SUPPORT STATUTE LAW AMENDMENT ACT, 1990 LOI DE 1990 MODIFIANT LES LOIS RELATIVES AUX OBLIGATIONS ALIMENTAIRES

Resuming consideration of Bill 17, An Act to amend the Law related to the Enforcement of Support and Custody Orders

Reprise de l'étude du projet de loi 17, Loi portant modification des lois relatives à l'exécution d'ordonnances alimentaires et de garde d'enfants.

Section/article 3:

**The Chair:** When we adjourned we were discussing the Progressive Conservative motion on page 32. Do we have any suggestions as to how to proceed at the moment?

**Mr Wessenger:** I am wondering if we might stand that down just for a moment. There is a minor technical change that has been recommended by ministry advisers which is not controversial and I wonder if we could just, with unanimous consent, move to that and get that out of the way and then we could go back. Is that agreed?

**The Chair:** The request is to stand down the motion on page 32 until Mrs Cunningham arrives. Unanimous consent?

Agreed to.

**The Chair:** And do we have unanimous consent to enter the slight change to subsection 3d(10)?

**Mr Poirier:** I have a question. Do you have the agreement of the Tory party?

**Ms S. Murdock:** Mr Harnick said that Mrs Cunningham was going to be in presently.

**Mr Wessenger:** This is an amendment that has already been passed, Mr Poirier, and the words we put in have created an ambiguity, according to ministry staff, and I think it is so—

**Mr Poirier:** I have no problem with what you want to bring forward.

**Mr Wessenger:** Unfortunately, I do not think Mr Harnick has been given a copy, has he?

**The Chair:** As soon as Mrs Cunningham returns, we will return to page 32, the motion.

**Mr Poirier:** Okay.

**The Chair:** Mr Wessenger moves that subsection 3d(10) of the act, as set out in Mr Wessenger's motion of 26 March 1991, be struck out and the following substituted:

"(10) An order suspending the operation of a support deduction order does not affect the payor's obligations under the support order nor does it affect any other means of enforcing the support order."

Any discussion of this change?

**Mr Wessenger:** Just to clarify the fact that when a support deduction order is suspended it does not affect any other rights to proceed to enforce the obligation.

**The Chair:** Any further discussions? All in favour of that?

Motion agreed to.

**The Chair:** Any areas where we can proceed in the absence of the third party?

**Mr Poirier:** I do not feel I am in a position to answer on behalf of the third party, but I have never seen a committee myself—the clerk may take exception or find another excuse, but I have never seen us proceed with just two of the three parties before. What did you want to proceed with right now, the PC motion? Did you want to stand that down, go to a government motion or what?

**Mr Wessenger:** We have already stood down the PC motion until Mrs Cunningham shows up so that we can resume debate.

**Mr Poirier:** I do not think it would be fair to proceed without the third party.

**Ms S. Murdock:** I would like to hear from the clerk. Given that the majority of us in this room at the present moment have never been on a standing committee before, was it the norm in previous standing committees that you proceed with all of the parties present, or was it legitimate to proceed with one of the parties not present?

**Clerk of the Committee:** Technically, a committee can proceed at the time that it is started unless somebody brings the lack of quorum to the attention of the committee. Committees generally, though, wait until there is one person there from each party, although that is not a requirement in the standing orders.

**Mr Poirier:** Not in my six years have I witnessed that.

**Ms S. Murdock:** Which is what we did when, actually, your side was not here one day and we waited.

**Mr Fletcher:** I would suggest, then, that we recess until there is a member from each party here.

**The Chair:** Mrs Cunningham.

**Mr Fletcher:** That is a fast recess, Mr Chair.

**The Chair:** I suggest that we move back to Mrs Cunningham's motion on page 32.

**Mrs Cunningham:** I am changing gears in my head.

**The Chair:** When you are ready, Mrs Cunningham.

**Mrs Cunningham:** I am sorry, Mr Chairman. It does get a bit embarrassing some days coming in late. Are the Liberals not here either?

**Mr Harnick:** Here he is.

**The Chair:** Mrs Cunningham, as soon as you are ready, please.



**Mrs Cunningham:** All right. I think we were speaking to the amendment 3d(10) that was put forth by the members representing our caucus, Mr Harnick and Mr Carr. The reason that we put this amendment forth was based on—and I say this sincerely, Mr Chairman—the public hearings. It was not until they were completed that we in fact sat and analysed the input to this committee on behalf of the public that in fact this new government said it would listen to.

The problem with the former government—and I say that with affection some days and not affection the others, but today since I am in a good mood I will say it with affection—is it listened but it did not do anything about it. That is going to be one of the great concerns that the public is going to have at the end of the term of office of this government. This particular bill is one that they are going to have to live with for a long period of time, I feel. Because if you take a look, Mr Chairman, yourself at the work of the legislative research service—which in fact we pay to give us advice—in the final summary of recommendations dated February 1991—Susan Swift did the work—this one includes all the submissions received as of 20 February 1991. If in fact there is another one—which I may have missed only in the last few minutes, not because I did not read it—it would only give further evidence to support the real desires of the public.

The subheading is “Support deduction order.” It says in that support deduction order section—I hope the members of the government committee have got this document and are paying close attention—“A support deduction order should be made only in the event that there has been a default under the support order.” I suppose it is mundane for me to have to go on like this, but we are very serious about this amendment. “Bazeley, Boyd, Burns, Dupperrault, Porter, Sweeney, Descoteaux, Martens, Pearce, Ross, Ryan, CMA, Lerner, AD, Axhorn, Fisher, HEART.” I could go on to tell you what the alphabetical titles mean, but I believe most members of the committee would know what they stand for. They are large associations that have consulted with their own groups that they represent and they have come before this committee after very serious consideration and given their points of view.

That is not to talk about the letters we all received that went on to support this particular resolution—or amendment, I should say—and I will repeat it: “A support deduction order should be made only in the event that there has been a default under the support order.” Why do I say this so strongly? It is because I think that all of us heard representation on behalf of members of the public, representation on behalf of families. I think the underlying concern in these very difficult times, and it has become even more difficult over the last few months, has been the survival of families. I am now talking about family members, even as they live apart, supporting one another.

One of the greatest concerns as we take a look at the challenges of everyday family life, first of all, is to pay the rent and pay for the food. Children want to become part of all of the extracurricular activities. We heard the one father talk about how he tried to give his ex-spouse, the mother of his children, the money for the music lessons. Do you remember that, Mr Mills?

**Mr Mills:** Very well.

**Mrs Cunningham:** Was that not a joke, the fact that he tried to give her \$20 more? In today's system, this bill is not going to help that. But it is such a joke that we are sitting here and we have got an institution of this government set up, called SCOE, which has been asked to do something, and that is collect the money and hand it over to the families that need it. We have got so many laws, so many rules, so many regulations, so many directions, that the people who are working in the offices cannot even keep up with them. We do not give them enough people to do the work. They do the best they can.

I know my colleagues in this very room spend a lot of time in their constituency offices talking to people who are not only victims of circumstance some days and victims of society as it stands—young children, I am talking about—but their mothers and their fathers—no matter what their state of marriage might be, they are still their mothers and their fathers—have to go through public institutions where in fact somebody withholds \$20 and puts it in the bank and at the end of 10 months sends back \$200 to the father and he finds out through this office that the mother did not receive the money for the piano lessons. I think we all felt sick about it. I do not think he was saying anything except that the system is not working.

To add that kind of another little direction to SCOE would give them one more thing to worry about, but to give it the kind of support it needs to do the job—the agency itself now—I think, would be a more responsible way of dealing with the issue at hand. Just fixing up what we have got right now that is not working would be a great step in the right direction. Many of us could go to our constituency offices on Fridays knowing that our family members have been dealt with, so that they are not sitting at the end of telephones waiting for people to return phone calls. That is part of it. The Workers' Compensation Board is the same.

We think if we write things down on paper, something is going to get fixed. Well, here is something that is written on paper that is not going to fix a darn thing. This automatic deduction—and yes, I know, there is a philosophical argument around the fact that if two people agree you do not have to do the deduction at source. In the real world, when people are unhappy with each other and they are having to go through courts and lawyers, and where a lawyer is giving sound advice to his client, he is going to say, “Here's the tool, let's use it.” Most people, the minute they get angry about something, are going to use it, even if they have not been advised; that is, people who in fact have a good track record of paying may at some time, for whatever reason, be advised that now they will be deducted at source.

1610

Three things happen when you are deducted at source for no reason. The only reason ought to be is that you do not pay, but if you are deducted at source because someone has used this ridiculous law three things happen.

First of all, the parent who is being deducted becomes angry. They may be angry anyway, but most people who

are trying to be responsible parents and supportive of their children try to keep their personal anger away from their children. In my work, I see the 20% or 30% of families that are not able to do that, they are just simply not able to do it, but there is a great proportion out there who are. So the father is angry or the mother is angry, really angry. They are angry because they were willing to pay, or they had already paid, and now somebody tells their employer that they are having to have this money deducted from their paycheques, which is work.

Second, and more important, I think, to the person who is being deducted, he has to share a part of his life with his employer. I do not know how the people around this table feel, but this whole issue of confidentiality around anything any more is a serious one for the public of Ontario. So one more reason: Your employer finds out something else about you, something you have already been embarrassed about, and so many of the witnesses who came before this committee talked about this very issue, having to describe to their employer the fact that they are separated, the fact that this is the amount of money that must be deducted. Sometimes, I suppose, given the way the systems work, the employer may find out before anybody even has a chance to go and talk to him. So that is the second thing: You lose your self-esteem, even though you are well-intentioned and have a good track record. You are angry at the spouse.

Third, without even speaking about it, the children then have another reason to be angry at mum or dad that day and become even more confused than they already are. I just think this is an irresponsible piece of legislation in that regard. There are parts of it that I like, but that one point I just do not like and I say it as a person who has worked with families which are separating, families which in fact have lived apart for many years; and I say it with even more concern now and, I believe, with more confidence, having sat as often as I could as a member of this committee, because I was interested in what the public said as they came before the committee. So all I can say is that if you are not going to listen to this one, you will certainly be hearing from us down the road and I will remember it in the next campaign.

Having said that, and not wanting it to sound like a real threat, I think that if the members of this committee jointly go to the minister and talk about what you want, based on what you heard, you just might be able to make a difference. I say that because I sat with that minister on other committees, on other justice committees in the past, and he was noted at that time for his ability to listen to the public, not just to his caucus colleagues or his cabinet members or people who sit on either side of us. We are here to listen to the public. That is why we have public hearings.

I made some comment with regard to SCOE. Again, I think all of us were made aware of some work that the members of the administration here in this Legislative Assembly, and certainly in the minister's office and in the clerk's office, provided us with. I get sick some days of all the work they do and nobody paying any attention. I hope that, aside from legislation, given the piece of information called "SCOE Caseload per Office and Enforcement

Staff"—I bet my friend Sharon Murdock paid close attention to this one. Remember this one, Sharon?

Was it not shocking? Case load per enforcement staff, Ottawa, 828; registered cases, 13,253; enforcement staff, 16. Give me a break. Windsor, case load per enforcement staff, 585; registered cases—can you imagine? Just think of these numbers—5,265; enforcement staff, 9.

When you start deducting people at source, people who have already paid, maybe we will take a look at this sheet a year down the road, right? Would it not be fun to look at this? Fun for us, because I know we are right, but sure as heck not fun for families that we are here to represent.

London, registered cases 8,601; case load per enforcement staff, 860; enforcement staff, 10. I am embarrassed to say that this family member is still asking me to see if we in fact could help this person with his case or with his presentation, or speed up the response that he may have had, or could we talk to his lawyer. Most people out there, the system is so complicated, they are just really reaching as far as they can reach for our help. And we are advocates on behalf of the public, and that is our job here, to be an advocate, not to muck the system up even more.

This one really surprised me. Oshawa, registered cases, 15,943. Can you believe that, in Oshawa? Is that where you live, Gord?

**Mr Mills:** Yes; well, near there. There are the oil factories there. A lot of people work in there who probably fit into this category. I do not know.

**Mrs Cunningham:** Case load, 797.

**Ms S. Murdock:** That is fewer than in your riding.

**Mrs Cunningham:** Yes, I know, but Gordon is just learning and he will be much better at helping them out down the road. I am getting to be pretty much a pro around this particular office, but it took me a couple of years.

Enforcement staff, 20. So the case load is a little bit less, but maybe there is a little bit further to drive. I keep justifying that. In London, geographically everyone lives pretty close to the office.

Sudbury, registered cases, 7,637; case load per enforcement, 849. Thunder Bay, 2,207 registered cases in Thunder Bay; case load per enforcement staff, 552. Hamilton, 17,557; case load per enforcement staff, 836.

Do you remember the worker who came from the city of Hamilton? He was a construction person who was pretty grateful that he still in fact had a job, but the job was going to wind down at the end of March. He came into this committee room—I can still see him sitting back there—and when it came his turn to speak he was shaking just a little bit in the beginning, but then as he got into it he became more comfortable. I think most of the committee members were treating him with a great deal of respect because we were really curious and interested in why he was here and if he could help us in our deliberations. In the end he got mad at Mr Sorbara—

**Mr Mills:** Well, that is natural.

**Mrs Cunningham:** No, he did not get mad at him for the right reason. I thought that he felt pretty good about the hearings myself, but I did feel that he was a bit confused as to what was going to happen next. And I think any one of



us, in our job of representing the public, when you see something like that, any one of us, if it is convenient, we should never let anybody walk away from these hearings confused, because they have to have confidence in the system. They have to know that we are listening.

He was so mad that even when I said, "Excuse me"—he was walking fast. I had to practically run to catch up with him, and I said, "I will answer your question and tell you what's going to happen next." At that time, with due respect, Mr Chairman, I thought I knew what was going to happen next. Like you, I am not sure what is going to happen next right now, but I still have confidence in this system, and certainly in the members of this committee, who have a great deal of influence—Mark, you should be sitting up and listening carefully, because you do. You do have a great deal of the best information to offer your colleagues.

1620

But he was mad at Mr Sorbara because he thought that Mr Sorbara had told him that you people were all going to vote the same way and in fact he would not have the opportunity to change anything. He was speaking for himself then—and I always have a joke with Mr Sorbara, because I say: "What's new, Mr Sorbara? After all, you wouldn't know, Mr Sorbara, because you were the minister. You didn't have to sit here and listen, but I sat on the justice committee." You know what minister he was, do you not?

**Ms S. Murdock:** Yes. I do.

**Mrs Cunningham:** But, you know, I am being fair here. He was mad at Mr Sorbara because he thought that what he was wanting—and that was he did not want his employer to know in fact that he had to pay support payments, because he said it was one more thing for this employer to do and to use against him and he said, "This job is going to be finished at the end of March and I want to be on the next job." He said: "You know how you get my job, Mrs Cunningham? You line up. You show up, and they pick the workmen to do the next task, and I want to be employed." And you can remember—I mean, I could go get the Hansard, but I do not have to repeat all of this—how he was making ends meet? He was actually making his support payments—do you remember?—even when he was not working. He found ways to make his support payments. And I think he is more typical of the people who are caught in the system than what we want to believe.

Now, he had a very different reason for not wanting to be deducted at source; he did not want his employer to know about it. He was also the person who went on to say that his spouse had been remarried and was living very comfortably, and he himself did not really think he should have to make the support payments to the extent that the support order had defined, but he was not willing to go back and have it changed. He would rather pay it because he wanted to be a good father to his children. And he told me in the hall that is what he lived for.

Now this is not fair not to give a person like that the opportunity to pay. So you guys have got a job to do. Derek, I will be judging you on your ability to get this job

done. We sit on the airplane together, so we know who works and who does not. I am now talking about my friend from Middlesex.

But the point is, we have a job to do in this committee, and that is not just to take directions from the cabinet. Unfortunately for the minister, he may be getting some very strong direction from people other than the political arm, of the work that gets done here, and I have no idea why. I mean, this sounds like a great thing to do if you are in favour of families that have not been getting support payments that they deserve; and for all these people who escape without making payments, this sounds like a good thing to do, but it is not. It is just one aspect of it that turns people off.

The other group it turns off are people who are already—probably the ones who will get away with it most are the ones who have ways of getting away with it now. We are not going to catch them with this law, and that category will become bigger. I am now talking about independent business people. They are their own employer, they can do business in Ontario or they do not have to do business in Ontario; their address can be almost anywhere. This is just another reason for them to avoid their responsibilities within their own province and close to home, and we had a number of them come before the committee. You know who they were. They said, "We'll just go somewhere else." You can remember that.

Anyway, it would be remiss of me to not mention the city of Toronto, which has 13,298 registered cases now at the SCOE office, almost the same number as Ottawa, and they have 21 enforcement staff, but their case load is a little bit less, 633. You do not think that is political, do you?

**Ms S. Murdock:** No.

**Mrs Cunningham:** I just think it is because there are more needy people here.

Interjection.

**Mrs Cunningham:** Oh, I see. No, that would not be true, would it, because the case load is higher in Ottawa.

**Ms S. Murdock:** That is what I mean.

**Mrs Cunningham:** Some 828 as—

Interjections.

**Mrs Cunningham:** It says 828 on here, but it may have gone up. All you need to do there is get rid of one person and you have gone up another 100 cases, you are right. So all I can say is, these are not statistics that we should be proud of, and I am not meaning to make light of them, but I am trying to help the government with its legislation, as someone in fact who has been very much a part of this work over the years.

When the Canadian Bankers' Association appeared before us, they were trying to give us some good advice with regard to mailing out these notices of a support deduction on behalf of the courts and they wanted the time frame lengthened because of the computer, but we dealt with that one. That is not the reason. I am sorry, Mr Chairman, I picked up the wrong letter here. Can you just wait five seconds until I get myself organized here? Do not panic, I am not going to read through that whole thing. Here we

go. I just had the wrong file. Somebody asked me for one of the papers that I had read into the record last week, one that I hope the government will pay special attention to, and that is the report on mediation.

This letter was sent to yourself, and it was from a mother. Marianne Karklins was her name. She is from Dovercourt Road, and she said:

"As a divorced mother with one son, I wish to express my displeasure with aspects of Bill 17, which is now before your justice committee.

"My son currently lives with his father. I have had the good fortune of having an ex-husband who does not object to me having ongoing contact with my youngster, Alexander. But many divorces are not so. Too often children are used as weapons when the access parent is denied visitation and/or contact.

"Your New Democrat colleagues have just destroyed Bill 124, which was designed to ensure that children can see both parents after separation. Now you are pursuing only the dollar through the enforcement of support payments.

"If I had an ex-husband who had interfered with my contact with Alexander, it is beyond belief you would come after me for child support payments, yet permit my ex to deny a relationship with my son."

She goes on to talk about the whole issue of access, which I know is not part of this bill, but I think that she ends her letter by saying something that is very important.

"Please modify your efforts on Bill 17 and, rather, focus your attention in the right of children to know both parents through the enforcement of access, or better still through joint custody."

You will remember that one of the reasons I am so much in favour of this amendment is to keep the anger levels out of the real day-to-day living in family situations. I think that her letter is one that we do not see enough of. She is pleading there for access on both sides and she is pleading for joint custody.

A little bit earlier in the letter she talked about mediation services, and out of this letter comes a presentation that this person made during Bill 124 when she talked about the real need for supervised access. There are so many letters, and these are they, asking for programs, Mr Chairman. Many of the letters I got, and I am sure you did as well, did not even talk about the bill. They talked about the need for program support. They talked about the need to improve the day-to-day operation of the SCOE offices. They gave specific suggestions, which were all documented, which I am sure the director will be taking back. They talked about the mediation report and how this particular bill could not stand alone. They talked about the need for supervised access programs.

All we are saying is, if indeed this government is going to deal with this whole issue of custody and support and access and mediation and family support, if you are going to deal with it in a piecemeal fashion, which is being done with this bill, for heaven's sake, fix the bill up and make it workable so that people in fact who are working in goodwill, who do want to support their children, who do want to be private in their day-to-day life, in their dealings, have

the opportunity to do so; and that is why I am speaking so strongly to this amendment.

1630

Could I ask you, Mr Chairman, is it your intent to—oh, you would not know this, would you? Let's ask Mr Morrow. Mr Morrow, would it be appropriate to ask a question? You could save yourself another half-hour of having to listen to me if the answer is appropriate. Is it your intent to vote against this, or am I just whistling Dixie?

**The Chair:** I do not believe that we have finished debate on this particular point. Mr Morrow?

**Mrs Cunningham:** Excuse me. Could I ask if any of the government members are going to speak to this?

**The Chair:** Mr Mills wants to speak, yes.

**Mrs Cunningham:** Do you not want to speak to it, Sharon?

**Ms S. Murdock:** I have said a couple of things when you were not here. When Mr Sorbara was speaking I have spoken to it.

**The Chair:** Are you wanting to continue debate then?

**Mrs Cunningham:** Well, if I am going to be speaking and using some of the evidence that I have used—I mean, I am happy to wind down here.

**The Chair:** I am sorry. So are you wishing to continue debate and allow Mr Mills to speak now?

**Mrs Cunningham:** I am trying to get through to the members here, because that man walked out of the room, left, because Mr Sorbara said they were all going to vote the same way. I have got his name and address. I am bringing him back for the vote. I am going to phone and see if he can come, because I do not want everybody voting the same way, and I know who was in the room. That is all I am saying. So I just asked Mr Morrow what his intentions were.

**The Chair:** Okay. Were you wishing to continue, Mrs Cunningham, or were you wishing to allow Mr Mills to speak?

**Mrs Cunningham:** Yes, but the response I get will depend on how long I have to keep—Are you still listening?

**Mr Morrow:** I am still listening.

**Mrs Cunningham:** So there is still hope. All right. By the way, I do not get to vote on this, Mark.

**Mr Morrow:** I know you do not. My ears are always open, Dianne.

**Mr Harnick:** They are not going to tell you they are going to vote against it.

**Mrs Cunningham:** No, I think they might take this seriously.

**The Chair:** Are you finished, Mrs Cunningham?

**Mrs Cunningham:** No.

**The Chair:** Okay. Go ahead, please.

Interjection.

**The Chair:** Mr Mills—

**Mrs Cunningham:** No, I am counting on you.

**The Chair:** Please allow Mrs Cunningham to finish.



**Mrs Cunningham:** In fact, I told Sam Cureatz what a good job you are doing.

**Mr Mills:** Thank you.

**The Chair:** All right. Mrs Cunningham still has the floor. We were trying to determine whether she was finished or not and she is not.

**Mrs Cunningham:** I know, but interjections are allowed. Would you like an unplanned interjection, Sharon?

**Ms S. Murdock:** Am I hearing you say that if you knew we were all going to vote against this you would not bother speaking any more? Is that what I am hearing you say?

**Mr Mills:** No. Opposite.

**Mrs Cunningham:** I would speak longer.

**Mr Mills:** Longer.

**Mrs Cunningham:** I mean, it would be such a farce. It would be such a farce to have everybody vote against it, you know? So my thinking is that you are not all going to vote against this amendment.

**Mr Mills:** We might convince you to vote with the amendment.

**The Chair:** Mrs Cunningham, go ahead, please. Interjection.

**Mrs Cunningham:** No, I do not think so, because—

**Mr Harnick:** We will vote with the amendment.

**The Chair:** Go ahead, Mrs Cunningham.

**Mr Harnick:** And if you can cope with the amendment, we would hope that you will vote with it as well.

**The Chair:** Mrs Cunningham still has the floor.

**Mrs Cunningham:** You are a good Chairman, Mr White.

**The Chair:** I try.

**Mrs Cunningham:** You work hard, and I did not make your life any easier in the last 30 seconds, but I will say this, that in fact I did not make your life any easier when you were in the Chair either, did I?

I just want to say that, for anybody who says—I should not even have to do this, Mr Chairman. I mean, we were all here to listen to the people who came before the committee, so I really am going to wind down, at least on this particular amendment, just with, I think, the best evidence that we probably had. It is basically from some 33 letters that we have, and this last one is with regard to a comment on Bill 17, where the writer is saying:

“I wish to both comment as well as bring to your personal attention the inappropriateness of Attorney General Howard Hampton’s declaration of imposing automatic payroll deductions and tracking of non-custodian parents.”

Now, people would argue that this is not automatic payroll deduction. I mean, that is the argument that you are going to use, is it not?

**Ms S. Murdock:** That it is not?

**Mrs Cunningham:** You are going to say it is not automatic payroll deductions.

**Ms S. Murdock:** No, it is.

**Mrs Cunningham:** It is.

**Ms S. Murdock:** Yes.

**Mrs Cunningham:** But I must say that certain members of the government have said, “Oh, but you have an option.” I am saying you do not.

**Ms S. Murdock:** What option?

**Mrs Cunningham:** The only option you have got is if the mother, in the instance of the father having to provide the support payments—forgive me, Mr Chairman, for using this example but it is the most prevalent one given the statistics—the mother would agree not to have it deducted at source. I am telling you there are a few who would do that and give people a choice. But certainly the intent of this government, if it passes this bill, is not to allow that to happen. Otherwise, why would you put it in law? Why would you do it? You have done it. It is automatic payroll deductions. It is a philosophical argument to argue otherwise. If you do not want it to be automatic, then support our motion which says it is not automatic.

I am a little bit embarrassed about our amendment. I really am, given the system. We have tried to meet the needs of the government in the best way we can, being very practical and at quite a substantial argument among ourselves in the democratic process of trying to represent the public. I thought one month was ridiculous. I thought you should probably go two months because of the system itself. It depends on when you start talking about the one month. I was persuaded, and I did not argue very heavily against this but it did cross my mind given the system, that is not very practical because even one month is almost too long.

I am in agreement with the government on this with regard to making the automatic deduction as quickly as possible after you have given somebody a chance. Our amendment says one payment, I think that is fair. It is not much of a chance, but at least it is a chance.

**Interjection:** Every dog gets one bite, right?

**Mrs Cunningham:** Everybody gets a chance. Now we are talking again in this letter: “His”—unfortunately the Attorney General Howard Hampton—“and his government’s action in this matter has been stated as a means to correct a compliancy issue in matters of support. In reality his amendment seeks to support the tactless incompetence of the custody and support branch.” That is a pretty strong statement. It is based on the fact that our SCOE offices right now are so overburdened. That is why I took the time to read these numbers into the record.

Anybody who is working long hours with these kinds of people, every one of those cases—that is not a phone call a month; in some of those cases it is 10 phone calls a day or a week. This is not easy work. These are not numbers, these are real people. That is atrocious.

“Of particular concern to myself is that Mr Hampton’s action attempts to take away from me my share of responsibility as a participatory non-custodian parent and to a larger extent my sense of control over providing financially for my share of our son’s support while in the care of his biological mother.” Talk about Ontario taking away the rights of individuals. An automatic support deduction is just that. You are taking away people’s rights, and that is because some eager solicitor, giving the best advice he can

to his client who is vulnerable—I think any solicitor who is giving the best advice will advise you to use the law.

“The bill will potentially threaten my status as a wage earner in this province by asking me to further reveal unnecessary information to a larger portion of the general public/employer and establishes a means for an open-checkbook approach to my earnings without undue monitoring of my ex-spouse’s ability to contribute to the care of our son.” I could have left the end of the sentence off but I chose not to when one is quoting from a piece of mail that all of us received.

I think this person has stated it very well. All I can say is that I hope that the government members of this committee, before they vote, will give this amendment very careful consideration based on public input in the spirit of which this amendment has been placed before the committee. I thank you for the opportunity to speak.

**The Chair:** Thank you, Mrs Cunningham. Mr Mills.

**Mr Sorbara:** Was he on the list?

**The Chair:** Yes.

**Mr Mills:** Thank you, Mr Chairman. I notice that whenever I—

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**Mr Sorbara:** Excuse me for a second. I hate to interrupt. I do not think it is the polite thing to do, but just on a point of order. Could you just tell us who was on the list, Mr Chairman?

**The Chair:** The list right now is composed of Mr Mills and yourself.

**Mr Sorbara:** And there are no other government members on the list right now to speak on this?

**The Chair:** No. Mr Mills.

**Mr Sorbara:** My apologies.

**Mrs Cunningham:** Mark is getting his speech ready.

**Mr Mills:** Thank you, Mr Chairman. I noticed whenever I indicate to you that I want to speak on this that you give me your Clint Eastwood smile and I do not know why that is because I—

**Mrs Cunningham:** That is a good smile, though.

**Mr Mills:** It is a smile for Dianne, but it is not the smile for Gord, however, I—

**Mrs Cunningham:** That is supposed to be non-biased. You had better straighten that smile out and make it the same for everybody, Mr Chairman.

**The Chair:** He is suggesting that I am more generous to you than to him.

**Mrs Cunningham:** Was he?

**The Chair:** Yes.

**Mr Mills:** He is trying to put Velcro on my lips and I feel—

**Mrs Cunningham:** I do not blame him for being more generous to me. Think about it.

**Mr Mills:** I feel that we sit here, we are on the government side of this committee and I think that it would be remiss for me to sit here, smile and say nothing. I was very disturbed on Thursday when my friend Gary—and I do not

know if I want to call everybody, Mr Carr, Mrs This and That. I thought in committee we were much more flexible than—

**Mr Sorbara:** Now there, that would be a good idea, I say to my friend from Durham East.

**Mr Mills:** That we can call people—Okay.

**The Chair:** You have the floor, sir.

**Mr Mills:** I was a little bit upset on Thursday when Gary spoke and he gave me the impression that he was suffering from some terminal depression in the fact that we, the government, were not taking any notice of what anybody said, that we just sat here and we twiddled our thumbs and we did not do anything. We were not listening, in fact, we did not care. We were wasting their time and Gary said, “I feel that I wasted my time here.” I just want—

Interjection.

**Mr Mills:** You also spoke about all the work that you have done and your colleagues had done, and I know Dianne has done on this bill. I would just like to say a few things for the record here. This is the first committee that I have ever been on, and my colleagues too. If you think that for one moment—and I can only speak for myself. I have not taken it lightly. I have done a lot of work on it and in particular the letters that we received. If I were to give you the key of my apartment there, you could go over on Wellesley Street and you can see it spread out on the little table where I have my meals all by my lonesome and I have read them and gone over and over and I—

**Mrs Cunningham:** There is great sacrifice for this job, is there not? Sitting by yourself, eating by yourself when you have been baby-sat all your life.

**Mr Mills:** —have agonized over this. I like to think back at the deputations that we had here. I remember there was a lady who came here with a small child. Most of you folks thought it was her child, but I had spoken to her outside in the hall and I had determined at that time before you asked, that it in fact was her grandchild. I said, “You know, it is a very hard thing for you to come here carrying this little child of yours.” She said: “I beg your pardon. It is not mine, it is my daughter’s.” And she said, “You know, we have been through this trying to get support payments, myself and then my daughter, going through it and I am here to speak in favour of this bill.” I said to her: “Where have you come from?” She said, “I have come from Ottawa.” I said, “Good Lord, how did you get here?” She said, “On the train.”

I think, Mr Chairman, that when she came here she did not even think that she was going to get reimbursed for this trip. I do not know. I think she came of her own free will and she spoke very passionately of all the problems that she had. That story of that lady sort of stuck with me and then, a gentleman—those fellows who came in with the signs and all in dark suits and never smiled and they were a little bit dramatic, I thought, in that they were not acting normal. I did not think people could really act as miserable as that, and then one little fellow came in and he started going on about what was wrong with the mandatory support deductions, and then he let it slip out that he was



behind. I sort of pounced on him in my previous life as a policeman to bring that out. Rightly, the Chairman pounced on me and he said, "You should not do that." I felt terrible about that because I thought I could ask that question.

Anyway, when he went out of the room, I took off after him and I caught him on the Legislature steps and I said, "I am Gord Mills, from Durham East. Before you leave here, I want to make it perfectly clear—"

**Mrs Cunningham:** Did you give him your pin?

**Mr Mills:** No.

**Mrs Cunningham:** Well, Sam Cureatz would have.

**Mr Mills:** Oh, he had a pocketful. That was his strong point.

**Mrs Cunningham:** And your card. You want to be here next time? That is what you have to do.

**Mr Mills:** I have not caught up with Sam yet. Anyway, this fellow I felt so terrible about, I said: "Gord Mills. I am from Durham East, and I want to apologize for what I said to you in there in front of the public. I felt awful about it." He said, "Oh, forget about it." So we got into some discussion and I said to him, "Where do you come from?" He said, "Kitchener." I said: "That's a funny thing, I am going to Kitchener tomorrow with this drug strategy group. You should drop over and have a few words with us." He said, "I'd like to, because I think marijuana should be legalized." So I said, "Hey," and then he got talking. I do not want to tell you some of the things that he said to me, but it immediately came to my mind that perhaps the marijuana was part of the problem way back when, and perhaps also marijuana was part of the difficulty with keeping up with the support payments.

Interjection.

**Mr Mills:** While I have sat here, I have been subjected to my friend Gregory, his laserlike look at me constantly, and his colleague Murray, and that has had some effect on me. I felt cramped. These fellows really know where—

**Mrs Cunningham:** They have more effect on you than they do their own colleagues.

**Mr Mills:** —really, they know where they are coming from.

**Mrs Cunningham:** They do that.

**Mr Mills:** I must say that I recognize your skills and your tremendous experience here and I went away and I scratched my head. Why am I saying all this? Because I want you folks to know that I consider everything, what everybody says, and in particular you, Dianne, your passionate plea for me to listen and to act.

**Mrs Cunningham:** Did you hear that, Mark?

**Mr Morrow:** I am listening, Dianne.

1650

**Mr Mills:** We have heard in the debate the really good guys that keep paying in, and we heard through the staff that these numbers tend to rotate. It is not always the same 25% that are the good guys, but about that percentage keep rotating. We say that we should not have these people

within this legislation because they have all the good intentions in the world. I would like to tell you that no one has got better intentions than I have. So when I came down here my wife said to me, "What I want you to do every day is to exercise and I want you to eat less." I came down here with those tremendous good intentions to do that and, Mr Chairman, since I have been here, I have fallen by the wayside. As you can see, I am eating more and I do not exercise. So I use that analogy to the guys that have good intentions about keeping up with their payments and paying, because I think, and I believe, that likewise they have good intentions, that they intend to keep it up, but people do fall by the wayside.

When I was elected and opened up my office in Bowmanville, it quickly came to my attention that there are problems with SCOE. We had ladies coming in—and I must be quite honest with you that when I was elected, I thought: "SCOE? What are they talking about?" It reminded me of some complaint or something, you know. I had never heard of it. So we looked into it, and through my assistants, we set up a support group of folks in my riding so that we could sort of listen to their stories, their emotions and experience, and they could offer their skills for coping.

I would just like to read you a little letter that one of them wrote to me. She said: "I am very enthusiastic about the idea of the support group, and I offer my assistance in its organization. I am a supporter of yours and have a personality which I believe will offer a lot to other women who have shown interest in your group." Then she says she also believes that it is a very needed service and will receive a good response in the area. "It shows that you care to a part of the population that doesn't feel too many people do." And she goes on to say that she has had problems collecting support payments for nine years.

That is the sort of input I have had that is making me think about this bill. So you can see that I have not taken the responsibility of dealing with this piece of legislation lightly.

And Mr Chairman—who has gone. He is back?

**Mrs Cunningham:** All breaks should be scheduled.

**Mr Mills:** I suppose what it boils down to—

**The Chair:** Yes, Mr Mills.

**Mr Mills:** What it really boils down to is one's philosophy on life itself. I think of all those folks that are up against it, that do not collect regularly. I could tell you—and I will not because it is going to go on Hansard—but I will tell you and be able to speak to you privately of something that happened in my own family about this. I would be glad to share that experience with you, but I am not going to put it down here because I do not want it to go on record.

I have great empathy with collecting support payments and the people that have that problem. This legislation, I agree with Dianne, in truth it is only going to affect perhaps that sliding 20%, 30% of the people. However, I think that the legislation, as far as the assisting and the collecting, will affect 70% to 80% of all those people who hitherto did not pay. If even 20% or 30% of those cases are caught by this legislation, then it leaves the case worker free to work in the 40% to 50% of those people that are not paying.

What can I conclude with? I can conclude that it is a state of where one is coming from in a philosophical way. I think the legislation really addresses a need of people that SCOE has not addressed. It is going to help people. In deference to my friend Greg there, who made a statement that I read in Hansard the other day where he says he is going to oppose this and keep on opposing it and delaying it, I would just like to conclude by saying that every day I feel—and I say this with a real conviction—every day that we delay this, we are hurting people that really we should be here to serve. I appreciate what Dianne said about where she is coming from and what Gary said, what all of you have said, but we are all here to represent people as we feel in our hearts, and I feel in my heart honestly that this piece of legislation will serve the people of Ontario, those people that have trouble knowing where the next bit of money is coming from to buy food and pay the rent. I thank you for the time.

**Mrs Cunningham:** Just on the point of privilege here with respect to Mr. Mills, I do not disagree with anything he said.

**The Chair:** A point of privilege, Mrs Cunningham. Mr Sorbara.

**Mrs Cunningham:** I think he is saying that he listened to us, and I am just trying to make clear where I would disagree with the end result of what he said, I think.

**The Chair:** I am not sure that is a point of privilege, Mrs Cunningham. I think Mr Sorbara has the floor now.

**Mrs Cunningham:** I think he was speaking to the whole bill when he made his speech—

**Mr Mills:** Yes.

**Mrs Cunningham:** —and did not speak to the amendment that we have. I am wondering if I could pursue—

**The Chair:** That would be a point of order that you could have brought up while he was speaking in terms of the irrelevancy of this development.

**Mrs Cunningham:** But when do I bring it up? Will he get another chance to speak, then, to the amendment?

**The Chair:** That would be a point of order, if it is a matter irrelevant to the—

**Mrs Cunningham:** All right, but when do you raise the point of order, Mr Chairman?

**The Chair:** While he is speaking. Mr Sorbara.

**Mrs Cunningham:** I did right at the end, Mr Chairman. I am not going to argue with you, but you cannot bring up a point of order until someone has finished speaking, because you do not know if he is going to speak to it or not.

**The Chair:** Yes, I believe you can.

**Mrs Cunningham:** I was waiting for him to speak to the amendment and he did not. The minute he stopped speaking, I raised the point.

**The Chair:** Thank you Mrs. Cunningham.

**Mrs Cunningham:** So when else could I have done it?

**The Chair:** A very good question. Mr. Sorbara.  
Interjection.

**Mrs Cunningham:** No, I did it appropriately.

**The Chair:** And politely.

**Mr Sorbara:** Thank you Mr Chairman. Let me begin by saying it is nice to be back here. It is nice to see that we have made some progress finally. I have no idea whether that has to do with the fact that I was not here, but be that as it may, it is nice to see that we have made some progress. I am disappointed that the progress means that some of the amendments that we were proposing have failed to pass and be carried by this committee.

I want to begin by congratulating Mrs Cunningham on her remarks, because I think that she takes her work and this bill seriously and she obviously prepared herself by reviewing some of the testimony and some of the materials that were submitted to us. My God, it has been months now since those materials were submitted. I think that it would do the government members well to reflect on and perhaps even reread what Mrs Cunningham has said in her remarks before they make up their minds as to whether or not they are going to support her amendment. I think that is the only appropriate course.

Might I just say that I also enjoyed hearing from that master of the microphone, my friend the member for Durham East, who after years of experience on municipal councils and experience as a tax collector and as an enforcer of the law pleads that he is very new to this process. His remarks were, as always, appropriate and relevant. Unfortunately, Mrs Cunningham is right: they were entirely out of order. He did not even mention the amendment that Mrs Cunningham was discussing, but I hope to hear from him again. I hope to hear some indication that he is actually going to support that amendment. I think it stands in the name of Mr Harnick, or else page 32 is wrong, at least in my notes. That is neither here nor there. Whether it is Mr Harnick or Mrs Cunningham, it is an important amendment and my good friend Mr Mills did not speak to it; he spoke to the principle of the bill, and this is what upsets Mrs Cunningham and me and some of the other members of this committee so thoroughly. We have an amendment before us which changes the bill in its particulars, in its details.

Mr Mills wanted to make me feel somewhat bad about the fact that we are delaying this bill and, in delaying this bill, denying those who would benefit from this legislation the benefit of the legislation. If I thought that were the case, I would tell my friend from Durham East, I would forgo the opportunity to improve this bill and I would try, with all of the ability that I have, to ensure its speedy passage, but the fact is that the government, these folks over here—and that is Howard, and that is the ministry, and that is the cabinet—have already decided when they are going to proclaim this bill. Read the last section of the bill. The bill does not come into force when we finish dealing with it.

The bill comes into force—perhaps I should read it for you. I am quoting from section 17 of the bill: "This act comes into force on a day to be named by proclamation of the Lieutenant Governor." Do you know what that means? Let's put it in simple terms: What it means is when the government decides that it is going to put the bill into force. Let Howard Hampton come back to this committee



and testify as to when he plans on proclaiming the bill. Let him tell us what his plans are. Let his parliamentary assistant tell us—

**The Chair:** Mr Sorbara, you are referring to section 17, not to subsection 3d(10).

**Mr Sorbara:** I am, by way of preliminary comments, speaking to the amendment, but I have to respond to Mr Mills. You, Mr Chairman, could have interrupted my dear friend from Durham East with your gavel or with your voice and said, "You're not speaking to the amendment." You chose not to, so I think it is appropriate to respond to him. Because this is important. When we set aside all the political rhetoric, this is important stuff. I agree with him, and we, each of us, stood in our places in the House and voted in favour of this bill. We are just talking now about particulars and the government members are so stubborn that they will not even consider a particular suggested by Mrs Cunningham, a particular suggested by Mr Elston, a particular suggested by myself. You will not even consider it. You will not even speak to it.

Why is this so offensive to me and why is the lack of interest in supporting amendment 32 so offensive? Let me tell you why. In order to make this point, Mr Chairman, I have to go back a couple of days to when my leader, the Leader of Her Majesty's official opposition, put a pretty straightforward question to the Premier of the province in question period. He suggested, by way of preamble, that the government was doing diddly-squat after six months of being in power. The government had virtually no legislation before Parliament and was not putting into place its program that it promised during the election campaign.

And what did Bob Rae say? What did the Premier of the province say? He said: "We have to wait. We have two important bills on the order paper, so we are not prepared, Mr Speaker, to bring forward additional legislation until these two bills are dealt with." One is being debated in the committee of the whole House right now. There is the member for Carleton; we see him on television debating Bill 4. We are debating the other one here.

1700

After an election campaign in which the world was promised to the people of Ontario, after the New Democratic Party has been in government six months, the Premier of the province says that he is not prepared to move forward with a legislative program until the Legislature has dealt with an interim piece of legislation, because Bill 4 only deals with rent controls on an interim basis—yes, it is retroactive, yes, it is draconian, but it is interim; the Minister of Housing said that—and until this committee completes its work on Bill 17.

That was a very low day for me, Mr Chairman, I will tell you, as a member who has sat in the House for some five and a half, almost six years now, for a first minister to say that he would be impeded from introducing new legislation until these two bills were passed. And he could not even remember—I had to help to him out—what support and custody orders enforcement was all about. He stumbled on it. It is embarrassing to see the Premier, even a

New Democratic Party Premier, stumble when he was trying to think about SCOE.

We are prepared to move forward on this bill. What we are not prepared to do is to easily move forward, amendment by amendment, in the absence of any indication that the government is willing to consider some very minor amendments. I warrant that if this group of nine people were sent away with this document, in the absence of pressure from the minister and the government, we could work out a compromise. I am absolutely sure about that.

Our position is simple. We want a small degree of flexibility in the bill to allow people to enforce the law without the benefit of the director of the child and family support office. We say when we ask for that flexibility that we want them to be dragged right back in in the event of one default even, but we at least want to make some sort of gesture of confidence in our people. The Tories actually want quite a bit more. They have less philosophical support for this notion.

I want to tell my friends in the New Democratic Party that we are not fooling on this. This is not new stuff to me. I had to assist the then Attorney General, Ian Scott, with this bill as it went through cabinet a long time ago. This is old stuff for us. The then Attorney General said that it would be important to create some flexibility in this system, and in fact he advocated a so-called kickout provision so that when SCOE was entirely satisfied that the government was no longer necessary to enforce the support obligations, the supporter—the payor—and the supportee—the person to benefit from the payments—would be ejected from the system, told to go it on their own, you know, like the young birds in a nest sort of thrown out of the nest when the mother bird decides that they can fly.

We had an amendment here and you defeated that. We have had an amendment before you that said, "Let's create the opportunity for some people to opt out if there is agreement and if the judge thinks it's okay." You can talk to any family court judge. They see these cases day after day after day. They know better than I and better than you, Gord, and better than you, Sharon, who should be in and who should be out. We pretend that we know so much. Dianne reads into the record stuff that was before the committee. We know very little. Maybe the judges know very little as well, but they know a lot more about who needs to be in and who needs to be out. So we say just put a little bit less of a burden on government because, after all, if you are successful in kicking out the people who do not need you, the limited resources—Dianne read the figures; they are shocking, the case load per person—would be used on getting the scoundrels.

Gord, you were in the Ministry of Revenue. You understand what enforcement is like. What more unpleasant task is there than paying taxes? But most of us are good-natured about it. We allow the taxes to be direct-deducted and we voluntarily assess ourselves. That is what happens when you fill out a tax return. You voluntarily assess yourself and you send it into the government and the government generally accepts that it is correct. It audits it, but it accepts, by and large, that that is a correct assessment. We trust our people, in other words.

**Mr Fletcher:** I was on the list.

**Mr Sorbara:** I am glad to see Mr Fletcher is next on the list. Just by way of interjection, I was in the member's riding the other night and I saw a groundswell of support for the former member. I encourage Mr Fletcher to participate as vibrantly as he can during this session of Parliament, because it will probably be the only Parliament that he participates in.

Interjections.

**The Chair:** You have the floor, Mr Sorbara. Please go ahead.

**Mr Fletcher:** How is Rick doing?

**Mr Sorbara:** Mr Fletcher asks how Rick is doing. He, of course, for the sake of Hansard, is referring to Rick Ferraro, the former member and future member for Guelph, and I say to my friend that he is doing marvellously.

**Mr Fletcher:** I will be seeing him in the summer.

**Mr Sorbara:** Now, back to the amendment. We are on amendment 32.

Interjections.

**Mr Sorbara:** I am not diverting from the topic, Mr Chairman.

**Mr Harnick:** No, it was me. I led him down that path. I apologize.

**Mr Sorbara:** You did.

**The Chair:** Mr Sorbara, you have the floor, sir. Do not let Mr Harnick interrupt.

**Mr Sorbara:** Notice that amendment 32, moved by, I take it, Mrs Cunningham, or perhaps Mr Harnick, or perhaps Mr Carr—

**The Chair:** I believe it was Mr Carr.

**Mr Sorbara:** It is a Conservative amendment, none the less, a PC motion. That is actually a contradiction in terms, PC motion. No, it is not, Gary. The truth is there is all sorts of motion, most of it backward until you came.

**Mr Sorbara:** Anyway, the motion provides for the suspension of the support deduction order, and I tell all of the government members that is all that Mrs Cunningham, that is all that I, that is all that Mr Carr, that is all that Mr Harnick, at this point, are asking for, some flexibility to suspend the enforcement of this order where everyone agrees that it is not necessary. I do not know what could be more reasonable.

I honestly do not know what holds you back. We have heard nothing from the government members as to what the great concern is. Mrs Cunningham asked about whether or not any remarks would be forthcoming about what the hesitation is on this reasonable proposal. Nothing. A good speech from the member for Durham East about the philosophy behind the bill—and we all agree on that, Gord. It was developed under a Liberal Attorney General. An NDP Attorney General introduced it. A Progressive Conservative caucus has expressed support. We are all with you, but our job in committee in clause-by-clause is the detailed architecture and we say, "Show courage, show independence, show a free spirit and support a reasonable

amendment." It does not necessarily have to be number 32. I think that there are some shortcomings, as a matter of fact, with number 32, but I would be flexible enough to support number 32 or any other flexible amendment that anyone wanted to offer.

Let me tell you why I think you should support it. The government is under severe financial constraint. Every penny is important these days. We have in this province the shocking sight of people lining up at food banks. I do not want to get into what I think about the responses of the Minister of Community and Social Services today in the House on that topic. She showed an arrogance uncommon even in the most arrogant days of previous governments. It was very upsetting to us.

**Mr Morrow:** A point of order.

**The Chair:** Mr Morrow.

**Mr Morrow:** Mr Sorbara is off the amendment. Can you please return to the amendment?

**Mrs Cunningham:** He is what?

**Mr Morrow:** He is off the amendment.

1710

**Mr Sorbara:** I do apologize to you, Mr Chairman. I will try and stick to the amendments. What I was pointing out by way of a parenthetical comment was that many of us were appalled and shocked at the way in which the Minister of Community and Social Services seemed to have absolutely no sympathy at all for the plight of so very many of our residents and our citizens in this province. I could not believe it. At least she could feign some sympathy if she really did not have any sympathy, but her lecture to the opposition members about how much the government has done, in the face of reports from the very people who are running food banks that we have a terrible crisis right across the province—

I am going to tell my friend Mr Mills that in the heart of Richmond Hill, at the United Church in Richmond Hill, right on the main street, Yonge Street, there is a big banner saying: "Bring donations. Food bank here." Richmond Hill is one of the richest areas in North America. Markham, right next door, has the highest per capita income and we are not far behind. I will tell you, when food banks are the order of the day in Richmond Hill, this province is in trouble. We are in a serious recession.

**Mr Mills:** This is going to help.

**Mr Sorbara:** My friend Mr Mills says that this is going to help. I want to tell him that when people do not have jobs there is nothing against which to levy a support deduction order. There is another reason. "To save a few pennies, keep me out of the system if I can establish, in partnership with my ex-spouse"—the Premier is always talking about partnerships—"and with the blessing of a judge in a family court, that we can fulfil our mutual obligations without the benefit of the director of the child and family support office. Don't make me put up security. Don't differentiate my ability to put up security with somebody else's ability not to be able to put up security." That is demeaning and it is an affront to Liberal and, I suggest to you, social democratic principles.



I want to tell Gordon Mills that this is my first experience on committee as well. I have never done this work before. I was as intimidated on day one as you were—perhaps even more so, because I am supposed to have had parliamentary experience—in that I came to the committee and had to ask my own colleagues how we go about dealing with bills.

It so offends me that we cannot see any movement on this tiny issue. It offends me as well that there is no other legislation for us to deal with after we have dealt with this bill. In the normal course, there would have been a number of bills that had gone through second reading and were waiting to be dealt with by this committee. What have we got, by the way, Mr Chairman? Do you know what is coming up? The Arbitration Act, developed by the former Attorney General of the province of Ontario, the member for St George-St David. A good piece of legislation, non-controversial, it will go through this committee in a flash. Not a big deal. The Class Proceedings Act, another bill developed by Ian Scott, a very important bill. I would like to see it here, but it has not even been debated in second reading. Yet we have nothing from the members on the other side, Mr Chairman, on SCOE. No suggestion at all, no hint or indication that they are willing to budge even one inch.

I just want to tell you that opposition members are elected, among other things, to oppose. The New Democratic Party made it a fine art during years in the Ontario Legislature and now you are going to have to bear some of the responsibility for that. I have got a lot to oppose in this House. Today, for example, speaking of amendment 32, the Minister of the Environment had the gall and audacity to stand up and announce that she alone has decided that Metro's garbage is going to go into York region. Where did that come from?

**The Chair:** Mr Morrow.

**Mr Morrow:** Mr Sorbara, can you please stay on the bill, or the amendment anyway, please?

**Mr Sorbara:** Speaking of the amendment, I just want to tell you how angry I am. I mean, talk about opposing. Ruth Grier—

**The Chair:** Mr Sorbara, Mrs Grier is not mentioned in the amendment.

**Mr Sorbara:** Well, maybe I should move an amendment mentioning Mrs Grier and her outrageous—

Interjections.

**Mr Sorbara:** Okay. Gord, if, without any prior consultation, Ruth Grier had stood up and said—

**The Chair:** Mr Sorbara, there is a point of order. Mrs Grier is not in the amendment.

**Ms S. Murdock:** Nor is Mrs Grier here.

**Mr Sorbara:** Well, she should be in the amendment and she should be here.

Okay, let's get to the amendment. Let's look at—

Interjection.

**The Chair:** Mr Fletcher, Mr Sorbara does have the floor, if he gets back to the amendment.

**Mr Sorbara:** Let's look at—

**Mr Fletcher:** You have not even read the amendment.

**Mr Sorbara:** Well, I have read it. I have read it carefully, and I note three things about it.

First of all, she has in her amendment—truth is, Mr Carr moved it. He in his amendment provided first for a suspension, an immediate suspension of the order. Notice how the amendment begins, "Despite any other provision in this section"—which means, for those of you who have not studied this stuff, it takes precedence over everything else in section 3—the court is required—I say required because the amendment uses the word "shall"—and it has to do it right away, "shall immediately suspend its operation if the payor requests the suspension and agrees to pay to the director the amount owing under the support order to which it relates and the court is satisfied that the payor is likely to make the payments."

Now, you see, this is a typical Tory amendment. It vests rights in the payor.

Interjection.

**Mr Sorbara:** Well, it makes the court respond to the request of the payor. I am not as happy about it as our amendment.

**Mr Harnick:** You are not reading the amendment. You are not even reading the words in there.

Interjections.

**The Chair:** Mr Sorbara does have the floor.

**Mr Harnick:** "And the court is satisfied."

**Mr Sorbara:** That is right. But in typical Tory fashion, the rights emerge from the interests of the individual. There is nothing wrong with that; the rights of the individual are important.

I think my friend Mr Harnick had something to do with the flow in this amendment, and I tell him that I am going to support it. I am going to vote in favour of it, although I would prefer my own amendment. Okay?

**Mrs Cunningham:** But the intent—

**Mr Harnick:** The intent is the same. You already blew that one.

**Mr Sorbara:** Yes, well, there we go.

**Mr Harnick:** Despite great effort.

**The Chair:** Mr Sorbara, go ahead, sir.

**Mr Sorbara:** Subsection 11 refers back to subsection 10, that is, the right of the payor to make the request, the court looks at it, the court says yes, okay, or the court looks at it and says no, sorry. The court has the final determination.

But when the request is made, the suspension of the support deduction order immediately ends if there is one default. Note the words, very carefully chosen, "fails to make a payment under the support order when it is due." One day late, "Sorry; we're going to enforce against you."

Now that is flexibility. That is reasonable. Some people would say, "Well, he should or she should have the right to default or fail to make a payment two or three times," but no, the Tories have said, "One default and we're going to start taking the full force of the support deduction order into effect and start deducting."

And let's not hear nonsense from the parliamentary assistant of the Attorney General that this makes it too cumbersome to enforce. What makes it more cumbersome than putting every single person into the system, even those who have absolutely the best intention to pay and in fact do pay? Statistically, there are what, 20% or 15% of the payors who will pay on their own? Let's take 15%. Surely if you are putting into this system 15% of the people who do not need it you are wasting public resources, and surely you would agree that if we could find a way to not bring that 15% in and devote those resources to something else, that would be a good idea.

So all we are really fighting over is a mechanism to identify those 15%. If you, Gord, can come up with a mechanism, we would be interested in hearing it. But what we find so objectionable is that the party of the new frontier says that there is absolutely no way of identifying that 15%. We can go to the moon, we can develop the most sophisticated technologies to know exactly how much money is in a payor's account here, there and everywhere, we can electronically fax that information all over the province, but we cannot put into law some system to identify that 15% who would pay anyway. It is not credible.

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You know why it is not credible? Because it is not true. We can find a way. But the fact is that the government wants to make a political statement to a variety of constituencies out there that have asked the government to show its muscle on this issue. And Gord, I want to tell you the truth. I know about that. I have dealt with that political muscle and I understand the expediency of responding. But you are in the first year of your mandate. You can afford the flexibility of doing what is right rather than doing what is politically expedient.

You could call for an adjournment, for example, of this committee and say, "We want to have one last attempt to speak to Howard Hampton on this matter collectively." You could go to him and say: "They only want a minor amendment to allow the good people out of the system. That is all they want."

And Gord, you can get the bill real quick. I tell you right now, I will forgo the amendments dealing with the responsibility of the employer, you know, the prohibition against harassing the employees, although your own Minister of Labour, who sponsors this because he is the minister responsible for the Employment Standards Act, said that very provision was not worth the powder to blow it to hell. Those are his words, not mine. I would like him to come back and testify before this committee and tell me why they are worth something in this bill and they were not worth anything in Bill 94. I think I have the number right, Mr Chairman.

But you could call for an adjournment and say, "We just want to go and try and convince Howard one more time of that one small amendment allowing the good people out," and you would get the bill tomorrow, or the next time we sit. The amendments will go like that.

We want to see some flexibility. We want to see that you are ready, willing and able to—

**Mr Fletcher:** Don't try to blackmail us.

**Mr Sorbara:** My friend from Guelph, the one-time member from Guelph, says, "Don't try and blackmail." Blackmail is strong words.

I cannot speak for my Conservative friends on this committee, but I am sure that if the government showed flexibility—after all, we are talking about a detail in the architecture—we could get through the rest of these amendments pretty darn quick, and I will put my party on record. We will dispense with the rest of our amendments. I am the whip on this committee and I have the authority to do that. We will dispense with the rest of our amendments if we see that the government has let a little bit of Liberal or Conservative fresh air into the room.

**Mr Fletcher:** I think we have done that.

**Mr Sorbara:** You only got 37% of the vote.

**Mr Fletcher:** It was 38%.

**Mr Sorbara:** Okay, 38% of the vote; 62% of the people presumably did not want a New Democratic Party government, so you need not rule as if the divine right of kings and queens had returned to the province of Ontario.

**Ms S. Murdock:** We are regarding 56 amendments, many of which were based on you and the Tories. So talk about inflexibility—

Interjections.

**Mr Sorbara:** Mr Chairman, I am offended by the interjection of Ms Murdock, and I will tell you why. I understand the 56 amendments. Ms Murdock knows that I have taken major pieces of legislation through committee, and these amendments arise from the public airing of the bill and they arise through the bureaucracy. When I took Bill 162 through committee, there were more than 56 amendments and virtually all of them arose through the public consideration of the bill.

Sure, some of the things that individuals said here shed a new light and the bureaucracy drafts the bills, but point to the amendments that have come up on the basis of what we think is politically important. I would like to hear about those. I would like you to give a speech on them. I mean, show me the amendments that have been passed based on our interventions, our talking hour after hour in this committee. Which ones are they? There are none. Technical amendments, you have said: "Hallelujah. Technical amendments. That's great. We'll pass it." Give me a break. We can let the technocrats deal with the technical amendments.

We want a little bit of dignity here. We want something for the hours that we have put into consideration of this bill and for what we think the bill should look like. We want some budging. We want to be able to go home to our constituents and say: "It made a difference that we were there. We changed the bill. We got the government to modify it somewhat to let the good people out of the system, the good men and women who wouldn't ever think of defaulting on their former spouses and their children." There are some of those out there, Gord, and even if there is one, we should consider that one in drafting the legislation.

Remember, Gandhi said a society and a government shall be judged on how it treats its minorities. If the good



men and women who will pay are the minority, their existence should be reflected in this bill. That is all we are saying. It is simple. We have had to say it over and over again, and we get nothing in response from the Attorney General, his parliamentary assistant, his staff members, his director and his colleagues in the Legislature—nothing. Do you know how frustrating it is to talk about this thing hour after hour and get no response? Well, we are here for four years.

**Mr Fletcher:** That is right.

**Mr Sorbara:** We have got time.

**Mr Fletcher:** Definitely.

**Mr Sorbara:** We have got energy. We have got commitment. We will be back. I mean, we are going to vote on this one. It is going to take 20 minutes or so after we have heard the last speech, and then we will go on to the next. But even if the government members were to call for an adjournment of a week because they wanted to sit down with Howie, he is a very difficult minister to get hold of.

**Mr Carr:** Get him Mondays at hockey.

**Mr Sorbara:** Well, I will go to hockey if I have to go to hockey. But if you five could sit down and speak with him and make the pitch—

Interjection.

**Mr Sorbara:** No, I do not play hockey, but Gary plays hockey, and there is Doug Reycraft; he plays hockey.

Anyway, Mr Chairman, those are my comments on the amendment as proposed by Mr Carr, or Mr Harnick or Mrs Cunningham. I note the presence of the former member for Middlesex, Mr Reycraft, and that is like another breath of fresh air in this committee room. Mr Chairman, those are my remarks.

**The Chair:** Thank you. Mr Fletcher?

**Mr Fletcher:** Thank you, Mr Chair. It has been nice listening to Mr Sorbara. I have always said I am a one-term wonder anyway.

About the amendment, as far as I am concerned, the amendment is changing the intent of the whole bill.

**Mr Mills:** You are not a one-term wonder.

**Mr Fletcher:** Well, I hope to be a one-term wonder, Gord. I do not want to be here much longer. I might get like everyone else.

There are certain things that are said. I mean, where do you get a statement, "the payor is likely to make the payments"? Who is going to judge whether a payor is likely to make the payments? Is that coming from the judge or is that coming from the director? I mean, that is rather ridiculous. No one can say, "Oh, you're likely to make the payments." Then the next thing you know, six months later down the road they have not made any payments.

As far as what the Conservatives and the Liberals are saying in this committee is concerned, you had your chance. The Liberals had five years; you had 40-something years. You had your chance at legislation. It is the New Democrats' turn to bring in legislation and we are going to bring in legislation, and it is the legislation that we want to bring in, not the legislation that anyone else wants to bring in.

As far as your amendments are concerned, you are not fooling me, you are not fooling Mr Mills, you are not fooling Ms Murdock or anyone else on this committee. The amendments that you are bringing in are amendments that are destined to change the whole concept of Bill 17 and we are not going to accept that. Personally, I am speaking for myself, we are not going to accept it.

As far as we are concerned, it is about time that people were forced to pay who have not been paying, and as far as treating minorities is concerned, I think a minority of people are being affected by this bill, not a majority of people.

In that light, Mr Chair, as far as I am concerned, we have argued this section, this amendment, for days. I have listened and listened to arguments from the Conservatives and from the Liberals which make some sense, but as I said before, you have had your chance at government, you have had your chance at legislation, it is our turn at legislation and these are some of the things that we see as being important and that is what we are going to do in this session, bring in legislation that the New Democrats want to bring in, the New Democrats made promises on.

Obviously you have not learned anything from 6 September. It is not how many promises that you make to people, it is not how fast you move, it is listening to the people. We say we are going to consult, we are going to listen, we have done that, and we keep getting lambasted from the opposition about move faster and move faster. That is not what we are about to do. What we are about to do is listen and make sure that we move with caution and try to make as few mistakes as possible, but we are going to make mistakes. This bill is not a mistake. The amendment would be a mistake, and it would be stepping back from the promises we made to the people that elected us. What we are going to do is move, as far as I am concerned, on this amendment, and we will probably vote against it. Thank you, Mr Chair.

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**Mr Carr:** I guess the reason I have some concerns is, that is why we put in the one fact that you will miss only one payment. We made it so that the courts will be able to look at it and decide whether there is a chance, based on the history. They are the ones who look at the financial statements. They are the ones who look at the decisions all the way along. They are the ones who go into detail and say: "Does he have a good history? Does he miss the payments?"

The financial statements go on record, all these facts are what goes into what the amount is going to be, even. They take a look at it, and when they get all the facts, rather than having it rammed in, where everybody is automatically going to fall into the system, we are saying, "Let's make the judge take a look at the situation," and to see, within his best judgement—and if he is wrong, he or she, if the judge is wrong, what happens? One payment gets missed and they come back in the system. One lousy payment gets missed, and they will come back in the system.

**Mr Fletcher:** You do not realize what one payment can do to a kid.

**Mr Carr:** I realize what one payment does, but what we were trying to say earlier is that the system is going to end up being clogged. Those who are not going to pay, these folks are not going to be able to be working with them, because we are going to have a system that is clogged up with the ones who might pay. If we could see where the money was not going to be getting into the hands of the kids, if we could have that explained to us, then we would be the first to say, "No, let's get rid of it."

But here is a situation where a judge is looking at the situation and saying—if the person he is looking at has a bad history, surely that judge can make a determination. We ask them to make decisions, sometimes objective decisions, on things in so many other areas. All we are doing is saying, "Let them have a look at it," and if there is any reason that it should not be done, then that judge can say, "No, that person should not be in for whatever reason." But if you took somebody who had a perfect record and was honest, and there is the odd one out there who has no history of having any problems, surely we should not lock them in to the system. That is why we are saying it is not as if they backed up and they miss payment after payment. If you miss one payment, and my friend, Mr Mills—and I will call him my friend because on all sides of the House we do build up friendships, and I mean that sincerely—when he talked about that lady in the earlier case that went on and on and on, that lady would not be affected, because if she missed receiving one payment, it would have fallen on the system. That lady would not be affected at all by this amendment. She might, originally, with the first one, when the first one gets missed, but then they would come in the system automatically.

**Mr Mills:** That is what bothers me.

**Mr Carr:** That is why we, in the long run, support it to get people like that, so we do not have that poor lady—and I think you are right, I was the one who mistakenly thought it was her daughter. She looked very young and I thought it was.

**Mr Mills:** She was complimented.

**Mr Carr:** Yes, hopefully it was a compliment. She took it as that. But those people are not going to be affected by this; maybe in one instance, if that person was not going to pay, but they miss one payment, and they go back in the system. That lady would not be affected. What we are talking about is the people who would normally pay not having to go into this system. That is all we are talking about. We are talking about a situation where we give people a chance. When the judge looks at it and says objectively, as they try to do—and let's face it, judges are not always objective and they are going to make mistakes, but they will make mistakes on the amount. We heard the one lady in here saying she did not get enough. Judges are going to make mistakes. We heard them say that there are three financial statements. You get three judges with the same financial statements, you are going to get different judgements, so there are going to be mistakes. There are going to be inequities in the system, anyway, based on what the judgement is going to be. So the judges will make mistakes, and maybe something can be done to avoid that.

**Mr Fletcher:** He missed a payment? And then what do you do, chase him with a car?

**The Chair:** Mr Carr has the floor.

**Mr Carr:** All we have got is a system right now that everybody is going to be included in, regardless of what their history was. Everybody is guilty and thrown in the system. Everybody is going to be guilty and classified as guilty, and have it immediately deducted.

**Mr Fletcher:** That is not what we are saying. You are taking it too seriously.

**Mr Carr:** It is rather serious because that is why we worked at it and said, "You are going to give people a chance," We heard a lady from Dofasco here saying, "The problem is, in a lot of cases, that people do not have the money." This bill is not going to affect that. This bill is not going to affect the problems we have. This bill is not going to affect the fact that some judgements, for some of the poor ladies and children, are so low that even if they got the amount it is not going to help them. I think that has been said.

Everybody realized it is not going to solve all the problems, and I guess that was readily admitted. But we said, going back to the courts, a judge has one chance to take a look at it and say, "No, this person, based on the history and the testimony in front of the court, I do not think he should be put into the system," or, "I think he should be put in the system." But that determination can best be made by a judge who has looked at the situation, looked at the financial statements, knows that family—and my colleague, who is a lawyer, will know that they get an in-depth look at that family through these proceedings. They get to know the financial; they get to know the reasons for the breakup; they get to know everything about that family.

Surely, at that time, that individual—rather than the government saying everybody is automatically thrown in—surely that judge at that time is in the best position to make that determination, having looked at the financial, having heard the testimony under oath of the situation, and knowing exactly what it is. Surely that person is in the best position to say: "Yes, I think this person will pay. Based on his past history, the facts as they lay before me, this person is likely to pay." Or, as in some cases, the judge may say: "No, based on the financial situation, I have looked at the financial statement, and the history is poor. There have been a lot of job changes, although a job change would not help this case, but there are a lot of different circumstances. I have looked at it objectively, and do you know what? This person should go in the system because we do not trust the fact that they are going to pay it."

That is why we included the last section in there, the failure to make one payment. We said it will come back into the system if you fail to make one payment. My hope is that when people see that we are not kidding around with this legislation, hopefully we are going to eliminate a lot of the work for these people, because a lot of people are saying: "They are not kidding. They will come into the system, so do you know what, maybe I will pay. Maybe I realize that the government and the major thrust of the bill is that we are no longer kidding about this, that I am going



to have to pay and that they will automatically take it off if I do not pay and if I miss one payment." It is my hope that a lot of people will then say, "I will pay. I will honour my commitments because I realize if I miss one payment, one lousy payment, I will come into the system."

That is my hope, and unfortunately we are not going to have an opportunity to know that before we judge the legislation. We are not going to know that. That is my feeling, and my gut feeling is, there will be a lot more people who will come in as a result of the major thrust of this bill. As we have said all along, the major thrust, you have support, but what we wanted was a little bit of flexibility on this, not in some of the technical amendments.

I know it has been said that there was some flexibility on this, but it was not, it was only the flexibility on the small technical matters, and quite frankly, was on some of the things that we pointed out. More to the point, some of the more astute legal minds pointed out some of the mistakes, so we tied up a couple of little technicalities. But the one thrust that we wanted to put in as an opposition party, and it has the support, as you know, of the Liberals, the one consensus we got from listening to people, was to put that in. Just a little bit of movement on a major issue. It does not have anything to do with past history and who was in government when they moved it. When the Tories were last in power I could not even vote. So what happens in the past with this bill does not really pertain to what we are trying to do, which is to make improvements. We can talk all we want about the fact that the Liberals never brought it in, although from what I am gathering here, from the testimony, a lot of work had gone on behind the scenes.

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There was a lot of cabinet discussion. The Attorney General of the day, Mr Scott, was making some movement towards this. I think that is why there has been so much work done for the people in the ministry. So we were moving that way. What he was trying to do, I think, was try to look at it in the long sense and add some improvements like this that in the long term would be beneficial. And for whatever reason it did not come up. There are, as we found out, in government a lot of priorities. This government made it a priority along with the bill where the Housing minister is now standing up there, so it is a priority. All we are doing is trying to say, "Will it be improvement," and if for one minute—I saw the lady that Gordon referred to—if I thought for one minute it would help that lady I would not have brought this amendment in, but that lady will not be hurt by this amendment. If she misses one—I guess it would be her daughter rather than her—her daughter would come in. For those people, yes, we should have some strong measures. The people who abdicate the responsibility, I say let's even be tougher on those people for whatever reason.

I appreciate the member talking about his personal situation because it does affect your feelings on this. But let's take a look at a situation like that. If the person missed one payment, they would fall into the system, and whatever the numbers may be that are not in the system, I believe the numbers might go up. When people know that the government is very serious about this and it is not going to become

something where you can get away with your responsibilities, I think the numbers will go up on their own. I am hoping that and I am praying that will be the case. So the numbers will go up. We will have achieved our objective, which is to get more money into the hands of the kids. But if that is our ultimate objective—and I guess I go back to my old management training—if our objective is to try to get more money into the hands of the kids who really need it, this one amendment that we propose will not hurt that.

If I thought for a minute that would kill the objective of getting the money into the hands of the kids—and I think I have mentioned many times before I have got three of my own. If I thought there were any children out there, like my children, who were being hurt by this amendment I would not have moved it. My feeling is that for those people who are going to be the chronic, bad payers, let's spend more time on them. Let's get the crew over here from SCOE spending the time, as they probably would have to do for that lady's grandchild, chasing that person down.

We heard my colleague, Mrs Cunningham, talking about the numbers that are out there that need to be chased down and it is horrendous. If we can get to those people and chase those people down and get more money into the hands of those children—and if I thought this motion would hurt that, I would not have brought it forward.

What I am saying is that with one lousy payment being missed, you would come into the system. Let's give everybody a chance. Let's give the judge the chance to take a look at it and say, "You know what, my gut feeling from years on the bench"—and let's face it, a lot of what judges do is based on their feelings and situations, having looked at the facts. If they feel for whatever reason that that person needs to be in the system they can be put into it, but let's not make government the ones that decide everybody gets pushed into it. Let's leave some discretion to the judges.

That is why we in our society honour judges so much. They are held in more esteem—I was going to say more than the politicians, but we are so far down the list now I do not think there is anybody above us. But judges do because they look at the facts, they look at them objectively, they take a great deal of time in study. The criteria for being a judge is the the amount of time that it takes to be able to look at these facts. Sure, there are going to be good and bad decisions made but these are the best people to make the decisions, not the politicians like us who say, "Nope, everybody should be in the system, so everybody goes in."

These learned people on the bench, these are the people that should be able to look at it and say no. And what is the worst possible case? If that judge, after looking at it objectively, after looking at the financial statements, after looking at all the circumstances and the inner workings of that family relationship that he does in setting the amount, after he has looked at it, even if he were to make a mistake, I would not have moved this amendment if I thought for a minute that it would hurt the kids down the road and that there was too much power.

But then we look at it and say okay, if that person makes a mistake and does fall out of the system and misses one payment, then he would come back into the

system as a result. That is why we are very clear to put that in there, and we have now given some more of the discretion to the director too, because we put in there very clearly "without an explanation that is acceptable to the director," because there may be a case where the actual letter or cheque had gone out with the mail and so on. We heard all the problems from the people who have been involved in it and we heard some of the testimony of all the things that can go wrong. Even when we do everything perfectly in the system, there are still going to be some people who are going to be hurt because of the system, because of the fact that things are going to get mixed up because of the massive numbers we are talking about.

That is why we put that if the judge now takes a look at it and says, "You know what, I think they should be in the system," and that judge makes a mistake and they fall out, then it is back to the director. The director could take a look at it and say there was a legitimate reason or there was not. So they are not going to escape off into the night after this. There is something in place to catch up to them.

I know the member, and I will not refer to the member, is tremendously concerned about individuals and getting the money in. The only thing that I want to convey to the government members is that we feel the same way too. We want to make sure those kids—and I hate to keep referring to my three, because they were down, two of them were down last week—yes, I have three—and the Speaker was kind enough to bring them in and take a look and tell them about the ghosts up on the fifth floor and everything else. We only brought two in because the third one is too young. But as a father—and I think Mr Fletcher has kids, too, if I am not mistaken; yes, he does, and I know Mr Morrow does; and I know both of our members do as well—there is the genuine commitment out there for children who are out there.

We want to see money in those hands, and what we would like to do is take a look later on at somehow what we are going to do about the fact that you have got three financial statements and, even with the judge making the decision, the circumstances are such that there are still going to be a lot of children out there who are going to be hurt. We are going to deal with that in other areas and in other legislation and so on, because the number of kids who are out there right now who are not getting the support they need and going to school hungry, there is a tremendous number of those people, and we will work in other areas to make sure they are helped.

But in dealing with this issue here, if any of us thought for a minute that any kids would fall through the crack as a result of this amendment, we would not be doing it. If you go back to the original thrust, the objective is to get more money into the hands of the kids. And if you remember that that is what the objective is—

**Mrs Cunningham:** Derek does not believe you, Gary; Derek does not understand.

**Mr Carr:** I know the other members do; I think most members do. I mean, what other motive could there be?

Interjection.

**Mr Carr:** I cannot talk that long.

**Mr Mills:** Are you going to talk until 6 o'clock?

**Mr Carr:** No, I do not want to. Charles wants to talk. I will make my final point.

**Mr Harnick:** Take all the time you need.

**Mr Carr:** Obviously, the members seeking my points are not making any—

**Mr Mills:** I understand where you are coming from.

**The Chair:** Mr Carr, go ahead. You have the floor.

**Mr Carr:** I can appreciate that the member does not agree with it. That is fine. But we wanted to get on the record the fact that the reasoning behind it and the things that happened, the moving testimony from that lady who was here with her grandchild—that moving testimony moves everybody and we want to see those people helped. The thing is, we do not want to see a system turn into a bureaucratic nightmare where the people we genuinely want to help we cannot. My big fear with this, and I guess the reality, is that everybody is realizing there is only so much money to go around with governments. I think most people realize that with the tax situation as it is, no more money is going to fall out of the sky; and the amount that we are going to take to process this 25%, or whatever it may be, is going to take away from what needs to be done to get the kids the money from the ones who are not paying and from other programs. It is not one big pot; rather, it is one big pot, because if we can save in this area, maybe that will go towards providing a breakfast program for kids somewhere down the line. Maybe it will go to increasing the amount of welfare, social assistance programs. Maybe it will go to increasing the amount for those kids who right now do not have enough to get on; whatever the court says, they still do not have enough to make ends meet.

1750

Unfortunately, this legislation will not help them, so the people we are talking about helping, we genuinely and sincerely want to help those people and hopefully there will be some slight movement on this. I know my colleague Mrs Cunningham said it more eloquently than I could, and I guess there was not too much movement, so I thought I would give a stab at it and probably did not do a very good job. But we wanted you to realize that when this goes through, these are the reasons behind it, these are the reasons that we sat down as we did with Charles and Dianne one night, going through some of the amendments and trying to perfect them and sending them over to the legislative counsel to get the wording correct and to tie these up. We spent a lot of the time because we genuinely wanted to make sure that there are less people out there like the lady who came before us.

I will close with that. I know my colleague wanted to raise a small point with what Mr Fletcher said.

**Mr Harnick:** I want to respond to what Mr Fletcher was saying. I am somewhat surprised that he would make the statement, "Promises don't matter; it's listening to people." I think if the Premier had heard that one of his members has come to that conclusion, that promises don't matter—I am shocked and I think he would give him the laser-eyed stare if that was really the case.



But it is interesting that after the member states that promises do not matter, he states that it is listening to people. What I would like to ask the member to do is to please review the material, review the evidence of people who came here and review what they said. I must tell you that you have got a great advantage over me because I did not have the opportunity to see these people live, I did not get the opportunity to see what their demeanour was, but you did, and when you read the words on the Hansard paper you have some idea of who the people were. To me they are just names, but you have a great advantage and you can read about the people who came here and said:

"Look, I always paid. Why are you doing this to me? Why are you forcing me to compromise myself with my employer? Why are you forcing me into a system where, after a matrimonial breakup, you are encouraging greater animosity by forcing me into a bureaucratic nightmare? Why are you doing that? Why are you making it more difficult for me to maintain a relationship with my children?"

**Mr Fletcher:** You should have been with me Saturday night.

**Mr Harnick:** I am sorry—well, I am really not sorry that I was not with you Saturday night because I was enjoying myself Saturday night on the long weekend. I have to be honest: I am not disappointed that I was not with you, but I hope that you are with me now and you are prepared to reconsider your position, because if promises do not matter but listening to people does, I urge you to listen to what the people came here and said. Again, you have a great advantage over me: You saw the people, you got to know them and I would urge you to listen to what they say, not just to utter the words that you uttered and ignore what the people said.

Now, the other thing that caused me some concern is this idea—and I use your words—that my party and the Liberals are fooling, we are trying to amend this legislation in an attempt to fool and change the concept of the bill. I take umbrage at the fact that you feel that we are fooling around and that we are trying to fool someone. Because if that is the impression that you have been left with after the weeks that we have been sitting here and talking about the concept of this bill, if you think we are fooling, then I think this whole exercise has gone right over your head, my friend. I am afraid to say that, but it has gone right over your head, and I take umbrage with the fact that you think that we are fooling. We take this very seriously and we are not trying to fool anyone. We are trying to create a bill that is a better bill than you brought to the table. We think, if you listen to us and if you listen to the evidence that people gave, we can make this bill better. No one is trying to fool you.

The other thing that you said is that it is the NDP's turn to legislate and that the other parties have had their chance. I will agree with you, you have been elected and people expect that you will legislate, but they are expecting good legislation and they are expecting a committee process as part of that legislative procedure that works, not a process where you are given marching orders by the Attorney General and his staff and you come in here and you nod affirmatively when we make the various points.

Interjections.

**The Chair:** Mr Harnick has the floor.

**Mr Harnick:** If you are telling me that this is now policy and that you have no options and you have no flexibility, why are we sitting here and going through this committee procedure? If it is policy and it is cast in stone, then we have all wasted our time. Again, the fact that you would utter the words that it is policy, shocks me. Virtually everything you said in your remarks shocks me, but the fact that it is—well, self-righteousness, I suspect, if those are the words I heard you say, is really not what this is all about. Obviously, the chip on your shoulder is so big that you do not think anybody else other than yourself, and the marching orders you have been given, is capable of making this bill better. It was my colleague who had great despair last time. With every word you utter, my despair becomes greater, and I hope your colleagues have the resolve to stand up and tell you that you are wrong and tell you that it is not policy and tell you that there is flexibility so that we can amend this bill and make it better.

The next point is that you have argued that the changes we are making by this proposed amendment change the whole intent of the bill. It is quite obvious that you have not read the amendment. The amendment immediately suspends the operation if the payor requests the suspension and agrees to make the payment and the court is satisfied—

**Interjection:** It is a weasel clause.

**Mr Harnick:** It is a weasel clause?

**Mrs Cunningham:** Mr Whip, do you not have more control over that member?

Interjections.

**Mr Harnick:** It is interesting, and I hope all these comments are going on the record, because it just shows the disdain that this member has towards this whole process.

**The Chair:** Mr Harnick, the comments are out of order and I think it is time for you to return to the amendment.

**Mr Harnick:** I am responding to what Mr Fletcher said, and unfortunately I am responding to the remarks that he continues to make. I truly hope that those remarks that he now makes and the remarks that he made in his comments a few moments ago are not reflective of what the rest of the members of the NDP on this committee stand for.

Mr Chairman, would it be appropriate for me to begin again at our next session, because it is 6 o'clock?

**The Chair:** Are you moving to adjourn?

**Mr Harnick:** Yes, I am moving to adjourn and I will wrap up my remarks—

**The Chair:** Mr Harnick moves adjournment. All in favour? We have four in favour. Opposed?

**Mr Harnick:** I believe that to sit beyond 6 o'clock needs unanimous approval, does it not?

**Clerk of the Committee:** Yes, it does.

**Mr Harnick:** Well, it is now 6 o'clock and you do not have unanimous approval, because I wish to adjourn.

**The Chair:** We are adjourned.

The committee adjourned at 1800.

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## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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 Carr, Gary (Oakville South PC)  
 Chiarelli, Robert (Ottawa West L)  
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 Harnick, Charles (Willowdale PC)  
 Mathysen, Irene (Middlesex NDP)  
 Mills, Gordon (Durham East NDP)  
 Poirier, Jean (Prescott and Russell L)  
 Sorbara, Gregory S. (York Centre L)  
 Wilson, Fred (Frontenac-Addington NDP)  
 Winninger, David (London South NDP)

### Substitutions:

Murdock, Sharon (Sudbury NDP) for Mr Winninger  
 Wessenger, Paul (Simcoe Centre NDP) for Mr F. Wilson

**Also taking part:** Cunningham, Dianne E. (London North PC)

**Clerk:** Freedman, Lisa

### Staff:

Revell, Donald, Legislative Counsel  
 Roux, Denis, Legal Advisor, Legislative Counsel











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## Legislative Assembly of Ontario

First Session, 35th Parliament

## Official Report of Debates (Hansard)

Monday 8 April 1991

### Standing committee on administration of justice

Child and Family Support  
Statute Law Amendment Act, 1990

Chair: Drummond White  
Clerk: Lisa Freedman

Published by the Legislative Assembly of Ontario  
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## Assemblée législative de l'Ontario

Première session, 35<sup>e</sup> législature

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Le lundi 8 avril 1991

### Comité permanent de l'administration de la justice

Loi de 1990 modifiant les lois  
relatives aux obligations  
alimentaires

Président : Drummond White  
Greffier : Lisa Freedman

Publié par l'Assemblée législative de l'Ontario  
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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday 8 April 1991

The committee met at 1540 in room 228.

CHILD AND FAMILY SUPPORT  
STATUTE LAW AMENDMENT ACT, 1990  
LOI DE 1990 MODIFIANT LES LOIS  
RELATIVES AUX OBLIGATIONS ALIMENTAIRES

Resuming consideration of Bill 17, An Act to amend the Law related to the Enforcement of Support and Custody Orders.

Reprise de l'étude du projet de loi 17, Loi portant modification des lois relatives à l'exécution d'ordonnances alimentaires et de garde d'enfant.

Section/article 3:

**The Chair:** I would like to call the meeting to order. We left off in clause-by-clause consideration of Bill 17 at the Progressive Conservative motion on page 32. When we adjourned, I believe you were speaking, Mr Harnick. Go ahead.

**Mr Harnick:** I was responding, when we adjourned, to Mr Fletcher's remarks where he stated that—

**Mr Fletcher:** Are we back on?

**Mr Harnick:** Yes. He stated that promises do not matter, that it is listening to people and moving with caution. I put it to you that by not allowing these amendments you are showing that you are not listening to people. You are ignoring what the witnesses who came before this committee said. I think you also described the amendments as an attempt to fool people and change the concept of the bill. If you are saying that we are trying to fool people because we are trying to prevent people from being forced into a bureaucracy when they are paying otherwise and do not need to be included, I would hardly characterize that as an attempt to fool people.

Mr Fletcher said it was the NDP's turn to legislate and he characterized everyone else as having had his chance. It may well be your turn to legislate, but it is not your turn to force people into a system of universal policy in the area of support obligations.

I would submit to you that the amendments are not directed at changing the intent of the bill. The amendments are directed at cleaning up the number of people who would be involved with the bill but do not have to be involved, so that the system would work better for those who are trying to escape their obligations rather than being clogged with those who are making their payments anyway.

When I put that proposition to Mr Fletcher, he stated, "Well, who will judge?" I put it to him that judges can easily judge the facts of every individual case and Mr Fletcher's concern was, "They make mistakes." Well, if judges make mistakes, courts of appeal can rectify their mistakes. If this bill turns out to be a mistake, it will probably be 10 years until anybody gets around to amending it, and the people who are caught in the system over that 10-year

period will be caught without a place to turn and without anyone to appeal to. That is not a concern I would say a court could not deal with.

I am disturbed. Mr Fletcher began his remarks by stating that this was government policy and could not be changed. If in fact that is the case, why do we bother coming to these committee meetings?

**Mr Fletcher:** I did not say it could not be changed.

**Mr Harnick:** You certainly inferred it and I do not understand, if it is government policy and it is written in stone, as Mr Fletcher seemed to indicate, why are we wasting our time here if you are not going to listen to us and if you are taking all of this as an attempt to fool someone?

Mr Fletcher had some problems with our amendments. The amendments state that the operation of the bill will be suspended if the payor requests the suspension and agrees to pay to the director the amounts owing under the support order to which it relates and the court is satisfied that the payor is likely to make the payments. In that case, the court would examine the facts and the suspension would then be adjudicated upon.

Mr Fletcher had some concerns about what happens if there is default. When he indicates that is a concern, it is quite clear that he has never read the amendments and I probably would bet that he never has. Subsection 11 indicates that the suspension order "is terminated if the payor, without an explanation that is acceptable to the director, fails to make a payment under the support order when it is due." Clearly that answers the question and the query that he had. Further, the final subsection indicates, "The support deduction order is reinstated when the suspension order is terminated under subsection (11)."

If Mr Fletcher had taken the time to read those amendments, he would be quite aware that this amendment only helps those who are paying anyway. It permits them to get out of the web this bill casts, and it only includes in the bill those people who are clearly breaching the support order, the support enforcement order. So if he would take the time to read the amendment, he can see that the qualms he has about it are all answered, and those are my submissions for now.

**The Chair:** Any further discussion? All in favour of the Conservative motion on page 32? Opposed? The motion is defeated.

Motion negatived.

**The Chair:** We will move on to the Liberal motion on page 33. Mrs Fawcett?

**Mrs Fawcett:** Can we have five minutes until my colleague, Mr Sorbara returns?

**The Chair:** The clerk suggested we could move on to the government motion on page 34.

**Mrs Fawcett:** And then go back to that?



**The Chair:** That is right.

**Mrs Fawcett:** Thank you very much.

**The Chair:** Is there unanimous consent to do so, in the absence of Mr Sorbara?

**Mr Harnick:** No, there is not.

**The Chair:** We are missing unanimous consent, which means we are on page 33. Mrs Fawcett?

**Mr Harnick:** Just a second, what was the unanimous consent for, to go to 34?

**The Chair:** To go to 34.

**Mr Harnick:** And miss 33?

**Mr Wessinger:** And then go back to it.

**The Chair:** To go back to 33 when Mr Sorbara returns.

**Mr Harnick:** Okay, I am sorry.

**The Chair:** We now have unanimous consent to go on to 34?

**Mr Harnick:** Let's see what 34 says.

**Mr Wessinger:** Are we going to 34, then?

**The Chair:** Mr Harnick, do we have your consent to move to 34? Okay, thank you.

Mr Wessinger moves that section 3e of the act, as set out in section 3 of the bill, as printed, be struck out and the following substituted:

"3e(1) Subject to section 3i, a court shall not vary the amount to be paid under a support deduction order unless the support to which it relates is varied.

"(2) When a support order is varied to provide for or to vary periodic payments at regular intervals, a support deduction order shall be made to reflect the variation.

"(3) A support deduction order shall not be made in respect of a provisional order that varies a support order."

**Mr Wessinger:** This amendment provides that a support deduction order can be varied only when the support order is varied; that is, the underlying order.

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**Mr Harnick:** Can I ask what the purpose of the amendment is.

**Mr Wessinger:** Previously, under the act, all they had to do was commence an application to vary in order to vary the deduction order. Now it is required that the underlying support order be varied before the deduction order can be varied.

**Mr Harnick:** Can you tell me why.

**Mr Wessinger:** Yes, because it was a concern that it would be misused by applicants, by bringing an application to vary and then never proceeding with it. In fact, this was brought to our attention, I believe, by the Canadian Bar Association, as well as a number of lawyers.

**Mr Harnick:** Can you give me the scenario, though, that you are concerned about.

**Mr Wessinger:** I understand what has happened in the past is that someone wanted to delay the whole process of enforcing orders for support. They would bring an application to vary and then they would just let it sit for an extended period and not proceed with it.

**Mr Harnick:** This is vary the support order?

**Mr Wessinger:** That is right; vary the support order.

**Mr Harnick:** So they would bring the application?

**Mr Wessinger:** Yes, and then they might get an interim order to vary and then they would never proceed with it. Normally they would bring an application to suspend enforcement of the enforcement order on the basis that they brought an application to vary and so the order for enforcement would be suspended and then they would not be proceeded with. As a result the recipient would be often prejudiced for several months because it was sort of abused; there was an abuse of the process.

**Mr Harnick:** I can appreciate your concern, but what you are saying is you have to go right back to the root, which is the support order, and vary it before you can vary the support enforcement order.

**Mr Wessinger:** Okay, perhaps I will let it be answered here.

**Ms Pilcow:** That was always the intention and that was what was set out in the original form of Bill 17. The intention originally was that you had to commence your application to vary because we intended that the amount of the support deduction order would always be the same as the amount of the support order in the long term. The problem is that if you get an interim application to vary your support order—I am sorry, let me see what the exact problem is; the difficulty is that people will believe—we do not want the payor to have the understanding that this means he or she does not have to pay that fuller amount at some point down the road. So once they get this interim variation, they really have no incentive to then go on and complete their applications.

This way the court has to be persuaded, on an interim basis, that the amount that should be paid is that lower amount. Even if it were left the way it was initially and, on an interim basis, they were allowed to pay the lower amount, in fact the support order is still in that greater amount and the arrears continue to accumulate, but not all payors understand that. This way it is perfectly clear to everybody. The court needs evidence to suggest that amount is not appropriate and that the support order should be whatever amount that new amount is.

**Mr Harnick:** So there is never going to be a situation where you can, because of whatever the circumstances are, temporarily lower the support deduction order?

**Ms Pilcow:** You can, but only if the court is persuaded that the support order should be reduced for that period of time, or you can also bring an application to suspend all enforcement, which parties can still do.

**Mr Harnick:** So essentially everything has to be before the judge at the same time?

**Ms Pilcow:** That is true. Actually there is one other circumstance in which the amount can be reduced. If you are paying for an ongoing payment as well as for arrears, you can bring an application to reduce the amount of the arrears only. But it can never go below the support order unless the support order is reduced as well. The intention is that people do not go to one court to deal with enforcement

and then go and deal with the amount of a support order somewhere else. That is what we are trying to avoid.

**Mr Carr:** Just on that point, if you go back to get the support order variation, what would happen to the arrears if you go back to the court, for example, and it says yes, and your circumstances have changed and you should be only paying a lower amount for whatever reason? Would they still be accumulating the arrears? How would you get rid of the arrears?

**Ms Pilcow:** It depends. It is up to the court to decide whether or not it was appropriate not to pay during that intervening period and it varies from case to case. If there was no income during that period, it is not uncommon for those arrears to be forgiven. It depends.

**Mr Carr:** But the court would do that.

**Ms Pilcow:** It can do that and it has done that, but it will not always do it.

**Mr Carr:** What about with some of the changes and amendments we put forward? Would that change any of that?

**Ms Pilcow:** No, the law relating to variation of support stays exactly the same.

**The Chair:** Any further discussion? All in favour of the government motion on page 34? Opposed?

Motion agreed to.

**The Chair:** Back to page 33. Mr Sorbara?

**Mr Carr:** Try and convince him, Greg.

**Mr Sorbara:** I am going to do my best.

**The Chair:** Mr Sorbara moves that section 3 of the bill, as printed, be amended by adding the following section to the act:

"3db. Interest on money paid to the director as security under section 3d or on the amount of any overpayment to the director under a support or custody order or a support deduction order shall accumulate in accordance with section 139 of the Courts of Justice Act, 1984, being chapter 11, as if the money were owing under an order from the date the director receives the money."

**Mr Sorbara:** The motion or the amendment is more or less self-explanatory. It is a simple and straightforward provision saying that if somebody else's money is in the hands of the director, then interest should accrue on it and it should go to the person legally entitled to the money.

I suspect that the government is not going to support this motion and that is too bad, but that is the way it has been going around here. I will be interested to know what the government's position is on the amendment. It is not earth-shattering; it does not change the progress that we are making in this province towards social justice for all and sundry, but it will be yet another indication as to whether or not the government is really interested in changing this bill.

Can I just quote from the Hansard of Thursday, 4 April 1991 in conjunction with this amendment and in conjunction with who has real interest in what is going on here. At that time, on 4 April, a question was asked by the former Treasurer of the province, the member for Brant-Haldimand, which related to unemployment in the province. You would

think that the Premier would have been concerned about unemployment. Mr Nixon's question was, I think, rather straightforward and it generally related to the explosion of our welfare rolls and our welfare costs.

In response to the question, the Premier responded as follows. He began by saying: "I just want to make two points in reply to the Leader of the Opposition. The first point is that he may think \$334 million in unpaid support payments, and dealing with that problem, is a minor amendment. That is not how it is regarded on this side of the House and I do not think that is how it is regarded by the people who are affected by this."

Remember, the question had to do with unemployment in the province, and what the Premier was referring to was his suggestion earlier on in that question period that somehow our democratic consideration of this bill was holding up some \$334 million worth of payments.

**The Chair:** I have the feeling, Mr Sorbara, that the Premier's comments were not related directly to welfare.

**Mr Sorbara:** No, they were related to SCOE; they were related to Bill 17.

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**The Chair:** They should have been more related to the Leader of the Opposition's question, but I am also wondering if you could explain what the Courts of Justice Act is and how this would relate to this particular bill.

**Mr Harnick:** Do you have a copy of the Courts of Justice Act?

**Mr Sorbara:** No, I do not.

**Mr Harnick:** Maybe we could get a copy of the Courts of Justice Act. Is that possible?

**Mr Sorbara:** I will leave it to my friends who practise law to deliberate on that.

Mr Chairman, you can imagine how offended I was sitting in question period and hearing the Premier of the province of Ontario, who is considered by all and sundry to be a very intelligent man, accusing us of holding up some \$334 million worth of support payments.

I do not know if you are a gambling man, Mr Chairman, but I will make a deal with the members of your committee, that if I could have testimony under oath from the parliamentary assistant or from representatives of SCOE that on the passage of this bill some \$334 million worth of support payments will then flow, I will defer. You and I know, we have been here long enough to know that this does not change anything, that this does not enhance any additional rights that anyone has. Now, hold on a second—

**The Chair:** If you could describe the purpose of the amendment before we get into a lengthy discussion of that, I am interested in what the purpose of your amendment is. I am sure the other committee members are.

**Mr Sorbara:** I will say to my friend—

**The Chair:** It would be interesting to get to that purpose.

**Mr Sorbara:** I will say to my friend, the Chairman, that I can get to that and I will get to that in due course.

This amendment is about equity and fairness in justice, and I am talking about equity and fairness in justice. I am talking about how bloody insulting it is for the Premier of



a province like Ontario to accuse me and my colleagues of holding up \$340 million in support payments. Who is preying on the backs of the poor under those circumstances?

These folks over here in SCOE, if they were given an extra \$10 million in resources, could do everything they wanted to do under this act without this bill. This could garnish everyone right away. They could make it their policy under the existing act to put into place a garnishee notice right away. But when Bob Rae accuses me of holding up some \$334 million in support payments, you know what it makes me want to do? Give long, irrelevant speeches on the amendment I just moved.

I went to see his press secretary after that and I said: "Laurie, do me a favour, one favour in your four years in government. Get Bob to bring it to the front pages of the papers. Let us have the Premier and I debate this on the front pages of the paper. Tease it out of him. Get him to say it every day. Get the press to ask him a question about what he means, because the press does not know what the hell he is talking about."

I would love that. I would love one opportunity to say; "We are not holding it up. All we want is a small amendment to let the good guys on the system out." But do you know what Howard Hampton says? Charles Harnick will verify this. "No, the principle of universality is sacrosanct here." Another program of universality is sacrosanct. There is no universality here. You get out if you have got enough money to put up a deposit of four months' payment. It is not universality. That is Howard Hampton's view of universality. That is what the interest groups said they wanted.

**The Chair:** I am still waiting, as I am sure everyone else is, for an explanation as to the purpose of the amendment. I would appreciate hearing that and I am sure other members would too.

**Mr Sorbara:** Well, okay.

**Mr Harnick:** It is perfectly clear to me.

**Mr Sorbara:** I am trying to make a comparison between one reasonable amendment and another reasonable amendment; this is a reasonable amendment. I expect the committee is going to vote it down. We have another reasonable amendment coming up. Murray Elston would like an amendment, speaking of amendments that deal with interest and additional moneys owing, and that is what this amendment is all about. There is the hook, Mr Chairman. He wants an amendment dealing with COLA. Do you know what COLA is? Cost of living adjustment. Murray Elston says that—

**The Chair:** We are still on Mr Sorbara's motion, which he has not as yet explained, which is on page 33. I would appreciate an explanation of your amendment before we debate it.

**Mr Sorbara:** I think this is unprecedented. The Chairman keeps interjecting when a member is trying to explain the thrust of an amendment.

Interjection.

**Mr Sorbara:** Do not blame me. I voted Liberal.

Interjection: You are one of a very few.

**Mr Sorbara:** No, my dear, I am sorry. I am one of about 32.6% and you are one of about 38%, and if you think that gives you the divine right to do whatever you want, just wait a while.

Anyway, Murray is going to bring an amendment, Gord, dealing with cost of living adjustments. The amendment is an important one because what happens right now with cost of living adjustments, at least according to Murray Elston, is that SCOE refuses to enforce them. As a result of that, they refuse to enforce every support order which has contained therein an automatic COLA clause, that is to say, "This payment shall go up by the cost of living based on the CPI."

Do you know what that means? The payor, as we are now going to call him or her, is automatically in default by virtue of the way in which the people at the branch run the business. So we need another amendment dealing with COLA to require SCOE to enforce the COLA clause. Because after all, if you are denying a spouse who is being supported the 5% or 6% cost of living adjustment, by virtue of the laws of the province of Ontario, that is pretty bad. I will pause and see if the parliamentary assistant wants to speak to that, but I think it is awful that this happens.

**Mr Fletcher:** Can I ask you a question about that?

**Mr Sorbara:** A question? Sure. I will defer to a question.

**Mr Fletcher:** I just want to ask Mr Sorbara on this amendment he has introduced, does the interest money that is being paid, that has accumulated, go back to the payor? Where does the money go?

**Mr Sorbara:** Sorry?

**Mr Fletcher:** Where does the interest go?

**Mr Sorbara:** The interest would go to the person entitled to the money.

**Mr Fletcher:** Not back to the payor?

**Mr Sorbara:** It is pretty simple and straightforward. If you are holding \$10,000 on behalf of someone and there is some issue as to whom that \$10,000 ought to be paid, when the question of the beneficiary of the \$10,000 is resolved, that money would go to that person along with the interest.

**Mr Fletcher:** I was just wondering about the overpayment part. If there was an overpayment, that money would belong to the payor and not the person receiving it.

**Mr Sorbara:** Yes.

**Mr Fletcher:** Would that go back to them?

**Mr Sorbara:** Of course, yes.

**Mr Fletcher:** But it is not spelled out where it would go.

**Mr Sorbara:** No. It says "shall accumulate in accordance with section 139 of the Courts of Justice Act," etc.

**Mr Fletcher:** That is what I am unclear about.

**Mr Sorbara:** Yes, if you refer to that section, that would straighten it out for you.

**Mr Fletcher:** Okay; thank you.

**Mr Sorbara:** I am not going to say much more about interest payments, but I am going to say more about

COLA clauses, and I invite members to consider this amendment, number 33, and support it.

**The Chair:** Which amendment is in regard to the COLA clause, Mr Sorbara?

**Mr Sorbara:** We have not got it yet, but I think Mr Elston has spoken with legislative counsel or with the clerk or with somebody, I hope.

**The Chair:** I am sure we would be interested in seeing it when it arrives.

**Mr Sorbara:** Yes. I think he will be here tomorrow and speak to it again.

**The Chair:** I believe he will be here substituting for you tomorrow.

**Mr Sorbara:** I hope so, and he will speak to it.

**Mr Mills:** I would just like to say that the idea that has come forward about what happens to the money and the interest intrigues me, but I am sure there must be some underlying problem here. In order for me to intelligently address this either support the amendment or not, I think I would rely on the parliamentary assistant to explain. There must be something that I do not know that I should know before I vote on this.

1610

**Mr Wessenger:** Okay. There are two aspects to this, or maybe even to this amendment. It is requesting, first, that interest be paid on moneys paid as security under section 3d—that is the four months' payment—and second, that interest be paid on any overpayment to the director, and it specifies a rate of interest; the rate of interest is that under section 139 of the Courts of Justice Act. That rate of interest, of course, is 1% above the bank rate, which would in effect mean that on the security of the fund, to receive interest on the money deposited, they would be receiving interest at less than that. In effect they would be obliged to pay interest on the security in excess of the amount of money earned on the deposit. I do not think we want to have a program that is going to be running at a loss, so I think that rate of interest is clearly the wrong rate of interest.

On the whole question of paying interest on security, the program is in the process of reviewing the question of interest and it will be determined in the regulations what the policy would be with respect to the payment on interest. I think we heard the director last time indicating that there was a provision to pay interest on moneys that were ordered paid by the court. At this stage, we just have not got the details worked out, but they will be in the regulations and I think that is the proper way to deal with it.

On the second question, on the overpayment, the problem here is that when money is paid to the director, the director then pays it out to the individual. We certainly do not want the director paying interest on money that is paid out to the recipient, and there is a provision, where money is paid to a recipient, that a court can order the recipient to pay the money back to the payor. If an order is made, then of course post-judgement interest would apply under the Courts of Justice Act.

I cannot prejudge what a court is going to say, but obviously a court, in determining whether to make an

order of repayment, would determine whether the creditor knew that the order terminated and was aware of the situation and was trying to take advantage of it. That would obviously be a factor, so that is the reason why we are opposing this amendment.

**Mr Mills:** But some areas of concern to Mr Sorbara are going to be addressed in some regulation down the road which—

**Mr Wessenger:** There is the provision right now in the act that if there is an overpayment, the court can order a repayment, if it deems it appropriate and can order interest repaid.

**Ms S. Murdock:** "May order," is it?

**Mr Wessenger:** No, I think if it makes an order for repayment—

**Interjection:** If it makes an order for repayment, interest flows from—

**Mr Wessenger:** Yes, if it makes an order for repayment, interest would automatically flow from that.

**Mr Mills:** I am kind of disappointed that we had the question posed. It makes me think, and in my desire to offer good judgement to the decisions we make here, I ask you all sorts of questions. Mr Sorbara is away chatting and he does not know what comes on and he will come back here and go crackers, saying that we that we do not know what we are talking about. Now that annoys me. He does not listen to anything you have said.

**Mr Carr:** Greg, you are being slandered here. You had better listen.

**Mr Sorbara:** Politics goes on.

**Mr Mills:** It is not politics. I would like you to hear what—

**Mr Wessenger:** I am sure he knows my answer. I think we could anticipate, Mr Mills. Mr Sorbara is very much—

**Mr Mills:** I am not slandering him.

**The Chair:** Any further discussion? All in favour of the Liberal motion, page 33? Opposed?

Motion negatived.

Interjections.

**The Chair:** He is a member of this committee. He has every right to vote.

**Mr Sorbara:** Do you want to insult me directly or what?

Interjections.

**The Chair:** We are now on pages 35 and 36, yellow replacement.

**Mr Sorbara:** Mr Chair, on a point of order, before the government moves this motion—

**Mr Harnick:** Are we gold or are we yellow?

**The Chair:** Yellow. Mr Sorbara.

Interjections.

**The Chair:** Ask the clerk, do not ask me.

**Clerk of the Committee:** It was Xeroxed on two different machines. When I asked the people to Xerox it on



yellow, some people came out with gold, so it may be on yellow; it may be on gold. It is not on white.

**The Chair:** Regardless, the words as read will be the same whichever colour your sheet might be. It is a government motion replacement.

**Mr Sorbara:** I have a point of order. I have not been able to raise it yet, but I will raise it as a point of order. I am suffering from an overabundance of paper. I have a bill here which is not the bill that was introduced. It is called, "Reprinted to show amendments proposed by the Attorney General," and there are notations here which indicate amendments from the bill as presented, or as debated on second reading. Am I correct thus far on my point of order?

**The Chair:** No.

**Mr Sorbara:** Let me tell you what my problem is. I have one document here, which is pretty good actually, except it does not have the amendments that—

**The Chair:** My understanding, Mr Sorbara, is that document, while valuable and—

**Mr Sorbara:** It has no official status. Okay, let me finish with my point.

**The Chair:** It has no official status.

**Mr Sorbara:** What I want to know is whether all of these amendments that are on the white pages, or at least all the government amendments that are on the white pages, are contained in this document.

**The Chair:** It is not a point of order. The answer is no. Mr Wessinger.

**Mr Sorbara:** Okay; then on a point of order.

**The Chair:** Do you have another point of order?

**Mr Sorbara:** I do have a point of order. Technically, I may not have referred to the standing orders, but we have been given gold or yellow pages; we have a pile of amendments that are numbered; we have an annotated version of Bill 17, and we have this printed thing. We have been away from this matter for quite some while, and if the clerk or legislative counsel wants to put these things in priority and tell me what is contained in what, I can deal with this bill somewhat more expeditiously.

**Clerk of the Committee:** Okay. We are not using the reprinted copy in the committee. It might be valuable to some people. It does not contain all of the government amendments as the government has given subsequent amendments since the reprinting of the bill.

**Mr Sorbara:** Does it contain most of these government amendments?

**Clerk of the Committee:** It does contain most of them. Everything that is on a white page was the original package sent in. The reason all new amendments are on either yellow or gold is so that people will know that they probably have not taken a look at them yet. So any amendment, regardless of the party, that came after the first 54 pages will be on a colour other than white paper. They have been coming in consistent packages every day.

**Mr Sorbara:** Okay. Mr Chairman, just another point of order: Might I just ask as a courtesy to me that when we are dealing with an amendment from this pile—white pile,

for Hansard's sake—numerically numbered, you or the clerk or legislative counsel advise me at the beginning of the amendment whether the amendment has been reproduced in this version, which has no legal status.

**The Chair:** The clerk informs me that if it is on white paper it is probably in that printed copy you have. If it is on yellow or gold then it probably is not. This is still not a point of order. Mr Wessinger.

**Mr Sorbara:** Okay. Well, just on a point of order then.

**The Chair:** Another point of order, sir?

**Mr Sorbara:** I just want to point out to you that this was not the case in the government motion we just considered, and that is my problem. It is not a difficult problem; I am just trying to follow along. The government motion that just passed—which was that? Page what?

**The Chair:** Page 34. The clerk says that most of the motions that are on white will be in the printed document, which has, however, no status, so whether it is in the printed document or not is largely—

**Mr Sorbara:** Well, all I am asking is the courtesy is that when the government moves a motion, just to advise me whether that has been reproduced in this document.

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**The Chair:** The government's motion which is about to be moved, sir, will be recorded in Hansard. You can get a copy of that, and it is on this sheet here. You will be able to identify it as Mr Wessinger moves it if you have the opportunity to—

**Mr Sorbara:** So you are not prepared to advise me from time to time whether or not the government motion is reproduced in this. The reason I ask is because this is the document that I am studying, okay? This is the document I am working from and where my notations are contained.

**Mr Wessinger:** I would just like to say to Mr Sorbara that we will try the best we can as we go through. One of the problems, I understand, is that some of the numbering has changed from this printed bill, so it may be a little confusing. We will try to do the best we can.

**Mr Sorbara:** I think that is reasonable. When you say, "I move that section 3e of the act," or, "I move that subsection d(2) of the act be amended," it is much easier if, having done that, you then make a short little statement saying that it is contained in this administrative version on page such-and-such, because if you do not, then it is very hard to follow the amendment and put it into a context, and that is what we are trying to do. Is that reasonable, Gord, or unreasonable?

**The Chair:** It is a very reasonable point, Mr Sorbara. Mr Wessinger, would you make your motion, please.

**Mr Wessinger:** Before I make this motion, this is a motion that is contained on the gold or yellow sheets and which is not included—

**Mr Carr:** Gold or yellow sheets?

**Mr Wessinger:** —in the printed bill.

**Mr Carr:** Which is not white, but gold or yellow.

**The Chair:** Mr Wessenger moves that sections 3g and 3h of the act, as set out in section 3 of the bill, as printed, be struck out and the following substituted:

"3g(1) Notice of the termination of a support obligation under a support order filed in the director's office or under a support deduction order where the support order has been withdrawn shall be given to the director by the payor or the person entitled to receive support, or both, in accordance with the regulations.

"(2) If the parties to a support order agree, in the manner prescribed by the regulations, or if the support obligation is stated in a support order to terminate on a set calendar date, the director shall cease enforcement of a support obligation that has terminated.

"(3) If the parties to a support order do not agree, the court that made a support order shall, on the motion of a party to the order, decide if a support obligation has terminated.

"(4) A court that finds that a support obligation has terminated may order repayment in whole or in part from a person who received support after the obligation was terminated if the court is of the opinion that the person ought to have notified the director that the support obligation had terminated.

"(5) In determining whether to make an order under subsection (4), the court shall consider the circumstances of each of the parties to the support order.

"(6) The director shall continue to enforce the support obligation in the manner, if any, that appears practical to the director until he or she receives a copy of the court's decision terminating the support obligation.

"(7) Despite the termination of a support obligation, the director shall continue to enforce the support obligation in respect of any arrears which have accrued, in the manner, if any, that appears practical to the director.

"(8) When the director's duty to enforce a support order has ceased, the director shall give written notice to each income source affected by a support deduction order that the support order has terminated.

"(9) A notice under subsection (8) may be given by prepaid ordinary mail to the last address of the income source as shown on the records of the director's office.

"(10) The parties to a motion under this section are those persons who are the parties to a support order.

"(11) The director is not a party to any proceeding to determine the entitlement of any person to support under a support order."

**Mr Wessenger:** The reason for this redraft is that subsection 3g(6) has been redrafted to delete the reference to a support deduction order which is unnecessary, subsection 3g(7) has been redrafted to clarify that the director shall continue to enforce a support obligation which is terminated in order to collect any arrears which have accrued, and subsections 3g(8) and (9) have been added to deal with the Conservative motion to subsection 3g(6a). That was the motion that suggested that notice be given to income sources, so it was redrafted because we felt that was a good amendment to the bill.

**The Chair:** Any discussion? All in favour?

**Mr Sorbara:** No, I have discussion.

**The Chair:** Oh, you did not raise your hand, sir.

**Mr Sorbara:** I thought maybe someone else wanted to say something about this bill. I do not know why I have to do all the talking, but if that is the way it has to be, that is the way it has to be.

Can I begin by posing a question, and if the parliamentary assistant to the Attorney General wants to answer, he might interject and interrupt me and I will defer to him, or legislative counsel or the whip or the New Democratic Party members or anyone else. Maybe Charles or Gary want to interject and answer, if they can.

My question is this: Do you recall that about two or three weeks ago, we were discussing the anomaly between a couple of sections I referred to wherein a spouse could, upon serving notice to the court, make an arrangement such that the support order was not filed with the court, and yet would be powerless, except under certain other sections that provide for the placement of a deposit and the agreement of the court, to remove or suspend the effect of the support deduction order?

In other words, to use an example, Mrs Jones, after a court had made a support order, could, filing notice to the court and to the director, arrange that the support order, the fundamental document upon which a support deduction order is based, not be filed with the director, and yet would not be able to do that in respect of a support deduction order so as to bring about a suspension of the support deduction order.

That seemed to me to be completely anomalous because, as I said at that time, if the underlying authority in the support deduction order is not filed with the director, I would question the director's ability to enforce the support deduction order, which appears to me in law to be a subservient document. I think the equivalent in land registration is the dominant tenant and the subservient tenant in easements. It has been years since I looked at property law, but I think as someone who practised real estate law, Mr Wessenger would understand what I mean. In other words, the authority upon which to issue a support deduction order arises only because a support order is made.

If we pass this bill in the state that the government proposes, we propose to say that a spouse—again, Mrs Jones—can make a decision to file a notice preventing the director from having authority over the support order, but not being able to do the same thing in a subservient document that arises out of the support order; that is, the support deduction order.

Now, I asked that question and I ask the question again under this amendment, because this amendment deals, strangely enough, with termination of a support obligation and what happens with the support deduction order. Can I just defer for a moment and see whether anyone has an answer to that question.

**Mr Wessenger:** I think I will turn it over to counsel, but before I do, I do not know whether you are aware, Mr Sorbara, but as a result of some of the comments you have made, there will be an amendment coming, not particularly relating to what you pointed out, but there was a problem that related to this whole question. A minor amendment was—



**Interjection:** I think it was passed.

**Mr Wessenger:** Was it passed?

**Mr Mills:** So you are winning some points.

**Ms S. Murdock:** See, we are listening.

**Mr Sorbara:** No you are not, Sharon.

**Mr Wessenger:** Counsel may wish to reply to that. I think it is clear, though that the intention of the act always was that the support deduction would be something that would apply, notwithstanding that the other provisions of a support order would not apply. Does legislative counsel want to add anything to that?

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**Interjection:** Legislative counsel is over there.

**Mr Wessenger:** Not legislative counsel; I mean the Attorney General's counsel.

**Ms Pilcow:** I am not sure what the question is.

**Mr Sorbara:** I will repeat it. I will try to simplify it.

What I pointed out the other day was that we have the anomalous situation under this act where a party to an action where there is an application for support can, after a support order has been made, rule by way of notice to the court and to the director to in effect prevent the lodging of the support order with the director. The authority to do that arises under subsection 3(6) of the bill, and again, I am speaking from this administrative reprinted version and I am reading from page 3, subsection 6 there, the English in the left-hand column. The words are as follows,

"The clerk or registrar of the court that makes an order described in subsection (5)"—that is, a support order; not a support deduction order, a support order—"shall file it with the director's office promptly after it is signed"—In other words, when the judge makes a support order, the clerk of the court has to file it with the director; that is the primary obligation; now here is the caveat or exception—

"unless the person entitled to receive support"—I have called her Mrs Jones for the purposes of my example—"files with the court and the director's office a written notice signed by the person stating that he or she does not want the order enforced by the director."

So, simple and straightforward, Mrs Jones, after the court makes the support order, can file a notice, give it to the court and give it to the director and say, "I do not want this support order filed." Notwithstanding that, she is without authority to do the same thing in respect of a support deduction order that, under certain circumstances, must be made by the court after it makes the support order. The underlying document is the support order.

Let's argue by way of example. The court says: "It is now time for me to make a support order. I order that Mr Jones pay Mrs Jones \$500 per month, adjusted for COLA every month for the next six years." If the court makes that order, this act says that it must after that make a support deduction order which allows for the automatic deduction from the paycheque. Mrs Jones, in my example, can file a notice—

**The Chair:** Legislative counsel has determined that they have clarified the question that you were asking and—

**Mr Sorbara:** Mr Chairman, I think it is highly irregular for you to interrupt a member speaking on a topic because you—

**The Chair:** I am just clarifying the question, sir.

**Ms Feldman:** This is the same issue that we were discussing some time back. It is quite different from what is on the table with respect to termination of support orders.

With respect to what you have been mentioning, which is your perceived anomaly between the ability to withdraw or not to enforce support orders versus the need to keep support deduction orders in the program, we have previously discussed that the employers indicated how necessary it was, when support deduction was the mechanism of enforcing a support order, to be able to pay through the central agency of SCOE rather than to thousands of creditors across the province and issue separate cheques. It was during the public hearings that they indicated that was necessary, that they had to be able to pay the support deduction order through SCOE or through a central agency.

A second thing that has to be kept in mind—

**Mr Sorbara:** If I might interrupt, if that is your answer, you have not heard my question.

**Ms Feldman:** There is more than one answer to your question.

**Mr Sorbara:** Okay.

**Ms Feldman:** The second matter is that support deduction is one of several mechanisms to enforce support orders, and the notice not to enforce on the withdrawal is something that has not been effective from the previous legislation. The present SCOE act contains notice not to enforce on the withdrawal.

Now, somebody who has a support deduction order where the support deduction order is working, where she is getting money through support deduction, is not apt to withdraw the support order. But somebody who is not getting money through support deduction because for some reason the support deduction order is inoperable, may want to take her own enforcement steps as she is able to do—garnishment, default hearings, seizure of assets, whatever she wants—through her own lawyer. They want to pay their lawyer to do that rather than have state-run enforcement. But that is quite different from what we are entertaining now, which is section 3g which has to do with termination of support orders.

When a support order is in the program, often we do not know. The program cannot know when a support obligation has terminated because very few support orders have fixed termination dates. Very few support orders say that support terminates when a child reaches 18 or 21. Rather it is when the child perhaps is not in full-time attendance at a school or when the child is no longer, under the definition of the Divorce Act, a child of the marriage.

This has caused problems in the past. What Bill 17 does is it gives a mechanism for the parties to notify the director that a terminating event has occurred under the order, because that is not information that the director has. That is what section 3g deals with and deals with completely, from the beginning of that notice provision to the end, as far as the director's obligation to continue to enforce

until a decision has been made by the court, is concerned if the parties themselves cannot agree on whether a terminating event has occurred.

**Mr Sorbara:** Okay. That is a very interesting argument for something that I did not ask for. I am sorry. With all due respect, I am still at the point where the support order is made. I realize that I have raised this before, but I did not get an answer and I did not hear it from anyone. No one phoned me up and said, "Yes, Greg, we understand your point, but we've decided against doing anything," or, "Yes, you're right and we're going to make an amendment not allowing a spouse to file the notice to the court," or you are going to do something. But consider how I feel. I am just ignored and I do not want to be ignored on this. I want a government response.

Let me put the problem to you again, okay? The parties are before the court. They have separated or there is a divorce proceeding and the court makes a support order. It is the first time that the court has ever adjudicated on this matter. They have made a support order. Under subsection 3(6) a spouse can file a notice to the director saying that he or she does not want that support order registered with the director.

Notwithstanding that, if you go through the act, you will find that the judge is still required to both make a support deduction order and file that support deduction order with SCOE, and SCOE is required to act upon it. Now, that seems to me to be bizarre and anomalous and crazy. If I have said to you, as the director: "I don't want this order to be enforced by you. Here is my note saying, 'I am not going to lodge this order with you,'" and you say to me: "That's fine. This support order is not going to be lodged with me," but at the same time, "We're still going to deduct the money from your husband's paycheque because we have a support deduction order here and the new law says that this has to be filed," that seems to me to be completely nonsensical. The party has just filed a notice saying you cannot act upon the basic support order and yet you can still act upon a support deduction order.

Let me argue by way of another example. If I am the beneficiary of a support order now and that order for some reason or another is not registered with the director and I phone the director up and say, "I haven't got my money this month," what are you going to say?

**Ms Pilcow:** File your order.

**Mr Sorbara:** File your order. You are going to say, "We can't act on the order; it's not filed with us," right?

**Ms Pilcow:** Right.

1640

**Mr Sorbara:** Okay; and if I say to you, "But I don't want my order filed with you," what are you going to say?

**Ms Pilcow:** No enforcement.

**Mr Sorbara:** No ability to enforce.

**Ms Pilcow:** By SCOE.

**Mr Sorbara:** Yes.

**Ms Pilcow:** Right.

**Mr Sorbara:** Yet what you are saying in this act is that even though the spouse has said that, the act still requires that the court make and file a support deduction

order and that you act on it. Am I reading this document incorrectly, or is that what you are saying? Because if that is what you are saying, I think that is an affront to the person who wants to file a notice under subsection 3(6). Somebody help me out with this.

**Mr Wessenger:** I think I can answer it very clearly. It is the intention of the legislation that a recipient cannot opt out of the support deduction aspect.

**Mr Sorbara:** Even though they can opt out of a support order?

**Mr Wessenger:** That is right. They cannot opt out of the support deduction. That is the whole intent of the legislation.

**Mr Sorbara:** I am terribly sorry; I just need a better explanation than that. It cannot possibly be the case. You have to amend subsection 3(6) to prohibit people from filing a notice where a support deduction order has been made. Don, am I way off base here? It just does not make any sense. If the fundamental document is not filed, how can you ask a branch of government to act on a document that is subservient to the fundamental document? I do not understand it. It is like saying, "You don't owe us any taxes, but we're going to come and collect 50% of them anyway."

**Mr Revell:** From a drafting point of view, there was a motion circulated, and I believe it is called page 10a, which makes it abundantly clear that if this motion is approved a support order to which a support deduction order relates will be enforced whether or not it is filed and whether or not it has been withdrawn. That will be abundantly clear in the legislation, assuming 10a passes. As to whether or not this is good policy, that is an entirely different issue.

The further thing that is left over, though, is in fact that a support deduction order would be filed promptly in any event, and one of the things is that support orders sometimes take longer to make them support deduction orders. So these things are left over. There are always going to be administrative issues.

**Mr Sorbara:** I hear you on that, and I have just read 3a. It is on one of the gold pages. It ends with the words "despite the fact that the support order to which it relates has not been filed or has been withdrawn from the director's office." But I am talking about the case not only where it has not been filed, but the spouse says: "Here, I'm signing something. Don't file this. Don't file the support order." Yet the law says: "Sure, we accept that, Mrs Jones, but you know what? You are powerless to prevent us from enforcing the support deduction order that the judge just made in respect of your husband's wages."

Somebody help me here, please. I am in distress. I do not understand how you could do this. This is nonsense. Paul, you are a lawyer. Just step out of the shoes of the parliamentary assistant to the Attorney General and tell me if in the real world this makes much sense. Charles, does this make sense? What is going on here? A man can file a notice asking that the support order not be filed with the director. That is to say the director has no power to enforce it; cannot attach assets, cannot execute a sheriff's writ to seize property and sell it, cannot do that, and yet the court, of its own volition and based on this act, is going to start



deducting monthly payments from the payor's paycheque. I cannot figure that out. Is it not an insult to the spouse who is supposed to get the support that she or he signs a notice saying, "I don't want the director to have anything to do with the support order," and next month some lunatic director starts deducting money from the guy's paycheque? What is going on here? That is all I want to know. I want to know what is going on here, and this relates to the termination of a support deduction order.

**Mr Harnick:** Just to go back to what Mr Sorbara was saying, if you go back to the amendment on the white pages of 34, which I did not understand when you explained it to me about half an hour ago and I still do not understand, it appears in subsection 3e(1)—we have passed this amendment—that the support deduction order depends upon the support order. If that is so in that section, it clearly has to be so in the other areas, so that the bill, as Mr Sorbara has properly pointed out, is deficient.

**Mr Wessenger:** I agree with you that the support deduction order does depend upon the support order, but the fact of whether the support order is actually filed or not with a particular enforcement branch does not really affect whether that underlying order is still in effect. It is still a valid court order, the support order, even though it is not filed with the enforcement branch.

I think counsel has indicated one reason why a person might not want the actual order filed with the enforcement branch, on the basis that he or she might feel that he or she was more successful himself or herself in pursuing the matter of seizing assets than the enforcement branch would be. They might have more confidence in their own solicitor than they would in the enforcement branch. On that aspect they can in effect opt out of having the enforcement branch take the other measures to try to collect the arrears. So I can see—

**Mr Sorbara:** Can I interrupt you just there? Let's assume that is the case. Let's assume that in the example I am talking about, the husband is not working at a job which pays him regular amounts at regular intervals, okay?

**Mr Wessenger:** Right.

**Mr Sorbara:** The spouse who is to benefit from the support has filed the notice saying that she does not want that support order filed with the director. The husband is one of the 2% who are the good guys, makes the payments regularly from work that he does or income that he earns that does not come under the definition of periodic payments for the purposes of this act.

You know full well, because you have studied this, that the court nevertheless is going to make a support deduction order; it is going to be in blank; it is going to be filed with the director, and if that person two years down the road happens to change the course of his life and take employment, the money has to start being deducted from that paycheque within 14 days of the first pay period.

What kind of justice is that? No one talks to the husband; no one talks to the wife, who is supposed to be getting the support. That all happens automatically. Money starts flowing in. There is a legal obligation to do it. The director, as soon as he or she finds out that person is working, has

to fill in the support deduction order, fill in the blanks and start deducting money. Even though he is sending cheques from somewhere else and they are being paid once a month, that has to be done, and she said, two years before when they were at the court: "Please, I don't want the director involved in this. Here's my notice. I'm filing it."

You are telling me that makes sense? You are telling me that Bob Rae is telling me that I am holding up this bill? I am just trying to get a little bit of good sense. I do not believe, in this case, that you have a bill that deals with universality. Universality does not exist when you can opt out by making four months' payment. I think there are major defects in this bill and we have not seen them all yet, and by God we are going to get to them if we have to argue here until the end of the fifth session of this Parliament, so let's start getting down to work.

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This part here does not make any sense. You can say to me, "Yes, but don't worry, Greg, administratively we are not going to start making those deductions." That is not what we are talking about. We are talking about the rights between people. You are a lawyer, Paul, you have studied this stuff. You know that our job is to make sure that we protect the rights of the individual in a free and democratic society, not just take universality because some lobby group says it is universality and by God the government is going to stand on its universality principle. Get real on this stuff.

**Mr Wessenger:** The only thing I would say is that we are really debating is other sections of the bill.

**Mr Sorbara:** Yes, we are talking about termination of orders.

**Mr Wessenger:** That is right. We are not talking about some pissant thing; we are talking about other sections.

**Mr Sorbara:** I know, but do you not understand my predicament? I raised this two or three weeks ago, spoke about it and put on the record the section that applied and how I thought it was inconsistent. I had a chat with Don Revell and had a chat with your officials. I did not have a chat with Howie. He did not want to speak to me about it. But it was all there and nobody phones, nobody writes, nobody sends postcards. I hear nothing. I do not hear about an amendment. I do not hear that I am out to lunch and my assessment of the bill does not make any sense and I have got it wrong, that it is all okay, that we will handle it administratively; nothing, zero. You have argued in court. At least when you argue in court, the judge is required to give reasons why he rules against you.

All I want are some reasons. All I want to know is how this could possibly make sense, that a support order can be kept out of the hands of the director at the instance of the woman who was supposed to receive support and yet she cannot do the same thing or he cannot do the same thing in respect of the support deduction order which falls out of the support order. Satisfy me on that. Agree to one or two of our amendments and we can all go home.

**Mr Carr:** My question relates to a particular portion that says, "in the manner prescribed by the regulations." I am one of those individuals who gets a little bit concerned

when we talk about the regulations, and I know all bills are not meant to tie up all the details, but what I was going to ask for was a little bit of direction. First of all, how far are we in terms of the regulations? Is this put in there without having any idea? If you do have some directions, maybe you could just give us some indication of what type of regulations you would be looking at.

**Mr Wessenger:** We are talking about subsection 3g(1).

**Mr Carr:** It is 3g(2). It says, "If the parties to a support order agree, in the manner prescribed by the regulations." I would like to get some indication of what you have thought of in terms of the regulations and how far down the road we are with that. If we are not down the road, what would the intention be there in terms of the regulations?

**Ms Pilcow:** I can speak to the intention in 3g(2). It is a very procedural provision and all that it will provide for is that both parties to the support order will be obliged to provide written notice to the program of when they have the knowledge that their support order has terminated. What is going to need to be provided for is how many days they have and what kind of notice is going to be given.

**Mr Carr:** Why would we not say that?

**Ms Pilcow:** Because it is a procedural section, and why would we want to put in our bill provisions about how many days and what the notice is going to look like? That more properly belongs in the regulations.

**Mr Wessenger:** Like rules of court; that is a regulatory thing.

**Mr Carr:** In terms of what we have, how far are we on the regulations then? Where are you at with that thing?

**Ms Pilcow:** They are not drafted. We know what is going to go in them more or less. The interest provisions are somewhat more complex and we are not as clear on what is going to go in those as we are on the balance, but the balance of the regulations are fairly straightforward. They are not unlike this one, which is only going to provide for notice by both parties within a certain number of days and who they give it to and when they give it.

**Mr Carr:** When are we looking to having the regulations tied up? What date are we looking at?

**Ms Pilcow:** I do not know. I think we are going to have to wait and see when we have our final form of the bill. Once we know what the bill looks like we know what the regs are going to have to look like as well.

**Mr Carr:** You know how far we have to work and how much time we have got.

**Ms Pilcow:** That is right.

**Mr Carr:** Okay. On subsection 3g(7) then, as we go along, in the last sentence there, "in the manner, if any, that appears practical to the director," what circumstances are we looking at with regard to this and then how would you interpret something like that?

**Ms Pilcow:** That is the standard of contact, the standard of enforcement that is expected and that is prescribed for in the rest of the act. The director is obliged to do

whatever is practical under the circumstances and that just repeats the language that appears throughout the bill.

**Mr Carr:** So again, we are leaving that to interpretation, then.

**Ms Pilcow:** That is the way the initial act was drafted, and that is the way the bill remains. The director does whatever is practical under the circumstances and is not obliged to do that which is not practical.

**Mr Carr:** But in terms of legal interpretation, then that could be subject to a debate within the courts? Lawyers will look at that and say: "Ah, now we are going to argue practicality." That is one of the outs the lawyers will use, then.

**Ms Pilcow:** I am not sure how a lawyer would use that as an out, frankly. I am not sure that it has ever been considered by the court. It has been in there ever since July 1987 and I do not know that it has created any problems. There may be case law, but it was certainly not a problem until now.

**Mr Mills:** Just to follow up on what Mr Sorbara says—and I am trying to get it right in my own mind—he says that they come and sign an order and that is it; they do not want it deducted—briefly, condensing what you said. It says it does not matter what you say, it is going to go through. How do they go about stopping that, or is that it, when both parties say they do not want that?

**Mr Sorbara:** You cannot do it. That is my problem.

**Mr Wessenger:** There is a provision under the act for opting out that is very limited, and it requires the consent of both parties and the posting of the four months' security.

**Mr Mills:** Oh, I see. So what you are saying is that they want to do it without the four months. That is what your intent, that they both sign—

**Mr Sorbara:** Gord, let me put it this way. If you could move an amendment eliminating that four-month security deposit problem and just have consent, then I would say that this thing is available to rich and poor and we could be out of here, and that is all I am asking. I have serious problems with the point I just raised. I will explain it to you again.

The two parties are in front of the judge. The judge says, "I order that Mr Jones pay Mrs Jones the sum of \$500 per month." After that, Mrs Jones signs a notice saying that she does not want that order registered with the director of the child and family support office, and that is still a valid notice after we pass this bill. Even though she does that, says, "I do not want this support order filed with the child and family support office," nevertheless, if we pass this act, the judge still has to make out the support deduction order and file it with the director and the director has to immediately start deducting money. That seems to me to be complete lunacy. Mrs Jones has just said, "I do not want this order filed," and yet we, the legislators, say we are still going to deduct the money.

If you want to bring forward an amendment saying that Mrs Jones does not have that right any more to not have the support order filed, okay, we can discuss that. Maybe that is the way it should be and maybe the government



should collect all debts and be the funnel for all of it. But you cannot have it both ways. You cannot give Mrs Jones the right to file that notice with the director saying she does not want the support order filed with him, and then at the same time require that the court write and file and act upon the support deduction order. That seems to me to be hypocritical. It seems to me to be bad law. It seems to me that it is going to be challenged in the courts. It seems to me that it is going to create confusion.

In the example I used, if the man is not working at the time that Mrs Jones filed the notice saying that she did not want SCOE to have the support order and then five years later he gets a job, as soon as they find out about it at the child and family support office, they are required immediately to start deducting from his paycheque. They do not have to tell him. They do not have to explain the circumstances to the wife, Mrs Jones. What this bill says is they have to immediately start deducting within 14 days, even though Mrs Jones five years beforehand signed a notice saying, "I do not want you involved in collecting my support."

I do not get it. Even though I do not get it, I acknowledge the realities of 6 September last and I say: "I am the opposition now. I do not get my way around here any more." But I am asking you, Gord, and the members of your committee, to at least do away with the security deposit business. Do away with the four months security deposit. Listen, bring forward an amendment and you are out of here.

**Mr Carr:** I just want to add to the points being made and to underline this, to make it very clear that this is what we are doing with this and I think Mr Sorbara is reinforcing it. I do not want to keep going around with it, but hopefully now you understand what the situation is. Very precisely, this is what we are looking at and this is how it is going to now be. We are going to look very ridiculous on this point, I fear, so that is the only point I wanted to add.

**Mr Sorbara:** Perhaps you want to go the other way and to create true universality, that is to say, no one can get out of this under any circumstances, no unconscionability clause. I do not care if you put up \$1 million in security. Everyone pays to them. If you want to do it, that is universality. Just like banning extra billing, that is part of universality. No better medicine for the rich. Your party and our party agreed on that. We had one hell of a battle with the doctors, but we agreed on it. That is universality. Everyone is included in the universe of the legislation—universality.

This is not universality. This is the worst bloody hodgepodge I have ever seen in this type of bill. It tells people they can get out, but they cannot get out. It says the government is talking about universality, but if you put up security, you get out of it. Give me a consistent piece of legislation. I would like flexibility. Government is too large right now to take on universality in this area without a bloody good reason to do it. So I say, let's have flexibility and let people out if they agree to get out and they post the security that the court thinks is appropriate. I do not know what that is. Maybe it is a mortgage on the house; maybe it is a good-faith bond, but you cannot have it both ways.

Let's get your response. Let's have consistency. Let's have universality or let's not have universality, but let's not try and have our cake and eat it, too. I just thought my friends over in the New Democratic Party—maybe I was getting to them because I heard Ms Murdock say, "Well, maybe we should eliminate the security deposit."

By the way, I am perfectly willing and our caucus will agree to an adjournment if they want to caucus and consider the matter and take it to Howie. That would be great. I would enjoy that.

**Mr Mills:** Mr Chairman, we would like five minutes to look at this in a caucus to discuss this, because in my mind it does seem a bit screwy. I would like us to get together and talk with Paul. Is that possible?

The committee recessed at 1704.

1713

**The Chair:** Let's call the committee back to order. We are dealing with the government replacement motion on pages 35 and 36. Further discussion?

**Mr Sorbara:** Yes. We had an adjournment of, I guess, some seven or eight minutes, and as a matter of courtesy I would ask that the whip or the member for Durham East or the member for Guelph or the member for Middlesex or any of the other members simply report to the committee on their deliberations. I would not mind hearing from the member for Sudbury. She is always eloquent before the committee and I know that she could explain her party's position as eloquently as anyone, so what happened?

**Ms S. Murdock:** What we broke for was to discuss the security deposit, actually, which is not part of the amendment before us at the present moment. However, my feeling is that we have been told constantly here that we are being inflexible in not considering some of the arguments that the universality question is in question, that in terms of being universal eliminating the four months' security is a consideration, except we have already passed that amendment, as I recall. It would then require having to go again to speak to the Attorney General and then it would still to be brought with, I would imagine, unanimous consent before this committee to be discussed.

**Mr Sorbara:** That could be arranged.

**Ms S. Murdock:** I am sure it could. The thing is that our general feeling is that since we have already done it we probably do not have to do it again. I am perfectly willing to bring it to the AG and discuss it with him—I will be seeing him later today—but we did not really decide anything. As I said, it had nothing to do with the amendment before us right at the present time, so we will end up coming back and discussing it, I am sure, at another time.

**Mr Sorbara:** Perhaps if I might respond to that, Mr Chair.

**The Chair:** This is not relevant to the motion in front of us. If you wish to discuss that with Ms Murdock in terms of the arrangement you suggested I am sure you could, but why do we not deal with the motion here?

**Ms S. Murdock:** Okay. Just in relation to that again, I imagine, knowing how it has been going thus far in this committee, that we will no doubt be hearing some other

version or wording of the same request so we will probably be discussing it again at a future date.

**Mr Sorbara:** I would like to speak directly to the motion that is before us, and because it deals with termination of support orders and we did terminate this committee, albeit briefly, to discuss the matters that I raised before that brief adjournment, I want to say in a preliminary way to Ms Murdock that the problems she raised are not problems at all. We can by unanimous consent return to a section. That is the first point but the second point is, remember, we have not yet passed any section of the bill. We have only been dealing with government amendments. Once we have done this we have to go back and pass section 3, because we are always dealing—

**Ms S. Murdock:** We have passed the amendment.

**Mr Sorbara:** Yes. Well, we have passed section 1—

**Ms S. Murdock:** We have finished all of the amendments we had.

**Mr Sorbara:** Then we consider the bill as amended—

**The Chair:** Mr Sorbara, the clerk brings to my attention that we have not passed the first two sections yet.

**Mr Sorbara:** Yes, that is right, the first two, but the bill is mostly section 3. Sections 1 and 2 are small potatoes in comparison to what is in section 3. Now, I would be delighted, just as we are considering pages 35 and 36, to entertain a motion—although I cannot do that because I am not the Chairman—or hear a motion deferring the matter until the government members of the committee have had an opportunity to have a further discussion with the Attorney General.

**Mr Mills:** That is not this amendment.

**Ms S. Murdock:** That is not this amendment.

**The Chair:** No. This issue does not have to do with the support security, does it, Mr Wessenger?

**Mr Wessenger:** No, it does not.

**The Chair:** So the issue you are bringing up is a very relevant one for bargaining with Ms Murdock or with the government caucus but it is not relevant to 35 and 36. If you wish to do that kind of bargaining I am sure that the government caucus would be more than willing to listen to you in subcommittee or whenever else.

**Mr Sorbara:** Mr Chairman, imagine my dilemma in trying to speak to pages 35 and 36, and that is what we were debating before the adjournment, and then on matters that I raised before this committee. The New Democratic Party members asked for an adjournment to consider those matters. That adjournment is over now and they do not phone and they do not write and they do not respond, so imagine my difficulty.

**Mr Fletcher:** Forget it, Greg; we are not considering that.

**Mr Sorbara:** I do not mind if you say, "Forget it, Greg; we are not considering that; the bill is going to pass as we propose it." That is okay. Just let me know.

**The Chair:** Can you return to pages 35 and 36, Mr Sorbara?

**Mr Sorbara:** Okay. Let's take subsection 3g(1) first of all. Now in just reviewing that subsection you will note that it says, "Notice of the termination of a support obligation under a support order filed in the director's office or under a support deduction order where the support order has been withdrawn shall be given to the director by the payor or the person entitled to receive support, or both, in accordance with the regulations."

Mr Chairman, do you remember that little point I made about a spouse has the right to file a notice saying she does not want a support order filed? It is not dealt with in subsection 3g(1). There are two problems. You see what they have done here. Follow this with me, would you? I know your members want to chit-chat, but you are the Chairman; follow this with me.

"Notice of the termination of a support obligation under a support order filed in the director's office"—that is the first instance—"or under a support deduction order where the support order has been withdrawn." Two instances: One where it is filed and one where it is withdrawn.

By the way, it cannot be withdrawn from the director's office unless it has first been filed. But based on the arguments that I was making just before the recess, there is a third situation. That is a situation where a support order has never been filed with the director's office. Why is that not dealt with here? I would rather know the answer to that question right now from the parliamentary assistant to the Attorney General.

**Mr Wessenger:** Do you think we should check with legislative counsel?

**Mr Sorbara:** Legislative counsel checked out a long time ago. He had had it with this place, seriously, and I do not blame him. I would not sit and listen to me all this time.

I am bringing up a very serious point, a very serious defect in this section. You, Mr Chairman, said you wanted to go clause by clause. There is a serious defect in this clause and I want to know why it is there. I just established the case without doubt that someone can ask that a support order not be filed with the director, and yet the support deduction order will be filed and will have effect. In this section, two situations are mentioned, where the support order has been filed and where it has been filed and withdrawn, but what about the third situation where there is a support deduction order even though the support order has never been filed?

**Mr Wessenger:** Yes, I think you have raised a point that needs to be taken under consideration right now.

**Mr Sorbara:** Okay. Well, let's just adjourn till tomorrow.

**The Chair:** Mr Sorbara moves adjournment. All in favour of adjourning? All opposed? Mr Wessenger?

**Mr Wessenger:** I will vote against adjournment then.

**The Chair:** We are still in session.

**Mr Wessenger:** I would ask that this matter be stood down.

**Mr Sorbara:** No unanimous consent.

**The Chair:** Okay. We do not have unanimous consent to stand down the motion to deal with Mr Sorbara's concern.



**Mr Wessinger:** I would ask for an adjournment for a few minutes; five minutes.

**Mr Sorbara:** I am not trying to be unreasonable. If you really want to go on to other sections, that is fine. The substantive problem we are facing right now is that we need your members, Paul, to agree to at least start a discussion with the Attorney General about how we are going to get beyond this impasse. But we have a very specific problem here as well, where the section does not quite make sense. There is a major defect.

**The Chair:** If there is a defect, then would you not wish it to be stood down so that defect could be dealt with?

**Mr Wessinger:** May we have an adjournment for five minutes?

**Mr Sorbara:** I will agree to a recess for five minutes.

The committee recessed at 1724.

1734

**The Chair:** I would like to resume.

**Mr Wessinger:** We have a drafting problem in subsection 3g(1) which cannot have a quick fix, so I will leave it in the hands of the committee whether we adjourn or have this stood down and move on to some other sections. We need unanimous consent to move on to other sections.

**Ms S. Murdock:** I have no objection to standing this down and moving on.

**The Chair:** Is there unanimous consent?

**Mr Sorbara:** Could we have a something from the parliamentary assistant as to where he hopes to go with the section that is still on the table.

**Mr Wessinger:** Okay. Perhaps I should indicate that the difficulty with subsection 3g(1) is that the existing wording does not cover the situation where a support order has not been filed; it only covers a situation where it has been withdrawn.

**Ms S. Murdock:** As pointed out by Mr Sorbara.

**Mr Wessinger:** That is right, as also pointed out in his prior problem, which we had addressed with an the amendment that has not yet been passed. So it is an acknowledged technical defect in the wording and counsel really needs more than five minutes to try to work out the appropriate language.

**Mr Sorbara:** Just let me say the following: I would like not to have to get into another section, because I have got my heart and soul into—

**The Chair:** Mr Sorbara, in relation to that, the clerk informs that we were improperly on pages 35 and 36 and should have dealt with the Tory amendment to the amendment first, in any case. So if we were to move to another section, it would be that amendment to the amendment.

**Mr Sorbara:** Just a second, now.

**The Chair:** Unless we stand them all down and go to 39.

**Mr Fletcher:** What would you like to do?

**Mr Sorbara:** I am a little bit confused. We have just had discussion for some two hours on 35 and 36 and I would like a clarification from the clerk.

**Clerk of the Committee:** I am quite willing to acknowledge the mistake. Page 37 was an amendment to pages 35 and 36.

**Mr Sorbara:** Is that 37 white?

**Clerk of the Committee:** Yes, 37 white is a PC amendment to 35 and 36, so after 35 and 36 were moved we should have dealt with the amendment to the amendment first.

**Mr Sorbara:** I see.

**Clerk of the Committee:** So technically we should be dealing with 37 before 35 and 36.

**Mr Wessinger:** Except that I understand that those provisions were incorporated in our amendment. I assumed that the Conservatives were agreeable to that.

**Mr Sorbara:** On a point of order, Mr Chairman: May I have a clarification. May I know whether we can move directly to page 37 white, considering that we have had our discussion on 35 and 36 but that it was improperly moved. Shall we go to page 37? We could move that, have a little discussion about it, have a 20-minute bell on it and just get out of here as soon as we can and continue this discussion tomorrow with a corrected version of pages 35 and 36. That is what I am proposing.

**The Chair:** So you are proposing then to move to 37, have a brief discussion and then a 20-minute bell.

**Mr Sorbara:** I am proposing that given what the clerk said, that we should have moved page 37 first, we simply move to that with a note, I guess, that 35 and 36 were not properly before us, move to section 37, have that moved, have a brief discussion of it and then either agree to adjourn in about two minutes or someone could call the vote and I will ask for 20 minutes and then we will vote the next day. I am telling you my strategy, okay? Do you want to consult with the clerk first? That is fine.

**Mr Wessinger:** Could I just ask one question. If we are going to 37, it may be that the Conservatives wish to withdraw it because if they compare their 8 and 9 to our 8 and 9, they are the same.

**The Chair:** Subsection 6a is different.

**Ms Pilcow:** It is your 6a, but it is incorporated in subsections 8 and 9.

**Ms S. Murdock:** In the yellow.

**Mr Wessinger:** In the yellow.

**Mr Sorbara:** Okay. Well, why do we not simply move it? We can discuss it and then a vote can be called and we can go home.

**Mr Wessinger:** They may wish to withdraw it. That is all I am saying. Give them a chance to consider it.

**The Chair:** Okay. So we are moving, then, to 37. Mr Carr? Mr Harnick?

**Mr Harnick:** If we can just have your indulgence for a moment.

**Mr Sorbara:** You get that easier than I do.

**Mr Carr:** We will withdraw it.

**The Chair:** The PC motion on page 37 is withdrawn.

**Clerk of the Committee:** We are still on this unless there is unanimous consent to stand it down.

**The Chair:** I am sorry. Is there unanimous consent to stand down pages 35 and 36, the government motion?

**Mr Sorbara:** We could stand it down until tomorrow. Can I just have a sense of—

**The Chair:** Do we have unanimous consent then? Okay, so 35 and 36 are stood down. We are now moving to page 39.

**Clerk of the Committee:** Page 39 yellow.

**The Chair:** Page 39 yellow.

**Interjection:** Do we have unanimous consent to move on?

**The Chair:** Yes, we do. Mr Sorbara gave us consent.

**Mr Wessinger:** Then the meeting would have to adjourn.

**Clerk of the Committee:** No, no.

**Mr Wessinger:** Would it not?

**Clerk of the Committee:** No, we are still on this section.

**Mr Wessinger:** We are still on this section?

**The Chair:** Mr Sorbara was the one who was withholding unanimous consent and he gave it a few moments ago.

**Clerk of the Committee:** Is there unanimous consent to stand down—

**The Chair:** It is somewhat confusing. I personally experienced that.

**Ms S. Murdock:** Your yellow and our gold.

**The Chair:** Your yellow and/or gold 39 replacement.

**Mr Sorbara:** Mr Chairman, just before we move that, given that we have sort of blown this now and we have blown 35 and 36 out of the water and it is going to have to come back in neither a yellow nor a gold nor a white but something else as soon, as the government redrafts it, why do we not just adjourn until tomorrow?

I will move adjournment and ask for a 20-minute bell.

**Mr Fletcher:** On a point of clarification, Mr Chair: Is this a 20-minute bell on the adjournment? Can we have some direction from the clerk?

**Clerk of the Committee:** Mr Sorbara moved adjournment. Therefore, there is a motion on the floor and any member can ask for 20 minutes to bring in his members on any vote. There is a vote on the floor and the vote is to move adjournment. Therefore, because it 18 minutes to 6, this committee cannot come back before 6 o'clock and therefore we will technically stand adjourned until tomorrow after routine proceedings.

**Mr Fletcher:** Does that mean that we come back and we vote on a motion to adjourn at the next meeting?

**Clerk of the Committee:** No.

**Mr Wessinger:** No, we have had unanimous consent to adjourn now.

**Mr Fletcher:** I did not hear that.

**Interjection:** We do not want to come back and vote on an adjournment.

**The Chair:** So when we resume, Mr Wessinger—

**Mr Wessinger:** We hope to return to pages 35 and 36. The committee adjourned at 1743.



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First Session, 35th Parliament

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Tuesday 9 April 1991

## Standing committee on administration of justice

Child and Family Support  
Statute Law Amendment Act, 1990

## Assemblée législative de l'Ontario

Première session, 35<sup>e</sup> législature

# Journal des débats (Hansard)

Le mardi 9 avril 1991

## Comité permanent de l'administration de la justice

Loi de 1990 modifiant les lois  
relatives aux obligations  
alimentaires



Chair: Drummond White  
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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday 9 April 1991

The committee met at 1538 in room 228.

### CHILD AND FAMILY SUPPORT STATUTE LAW AMENDMENT ACT, 1990

### LOI DE 1990 MODIFIANT LES LOIS RELATIVES AUX OBLIGATIONS ALIMENTAIRES

Resuming consideration of Bill 17, An Act to amend the Law related to the Enforcement of Support and Custody Orders.

Reprise de l'étude du projet de loi 17, Loi portant modification des lois relatives à l'exécution d'ordonnances alimentaires et de garde d'enfants.

Section/article 3:

**The Chair:** I call the committee to order. We are dealing with the amendments which are on page 35 and 36 on the yellow pages, to which will be added a small amendment to the amendment that Mr Wessenger will read now.

**Mr Wessenger:** This is with respect to the motion that we were discussing yesterday.

**Mr Elston:** Just before you read that, could you recap what it says?

**Mr Wessenger:** I will recap after the—

**Ms S. Murdock:** Do you want to hear what happened yesterday? Nothing.

**Mr Wessenger:** Nothing. That is it.

**The Chair:** Mr Wessenger moves that the motion be amended by striking out the proposed subsection 3g(1) of the act and substituting the following:

"(1) Each of the parties to a support order shall give to the director notice of the termination of a support obligation under the order in the manner and at such time as may be provided in the regulations if the support order is filed in the director's office, or if a support deduction order has been made in respect of the support obligation."

**Mr Wessenger:** This amendment is made in response to a point raised by Mr Sorbara yesterday. It was a technical problem with the section that left out a situation where an order might not have been filed. We reworded it to refer to a support order as filed in the director's office, which corrected the problem because we formerly had the words "where a support order has been withdrawn."

**The Chair:** Any discussion on the amendment to the amendment, which we should probably call 36a inasmuch as it refers to 35 and 36?

**Mr Sorbara:** On a point of order, Mr Chair: We have not moved the amendment yet, have we?

**Mr Elston:** We just moved the amendment.

**The Chair:** It was stood down then brought back up today because of the amendment to the amendment as per your suggestion yesterday, Mr Sorbara. Any further discussion on 36a?

**Mr Elston:** Yes, because the wording is quite a lot different in many ways. Rather than having a couple of places that are covered by this it merely says—it has two examples in the first one but there was an omission of a third. Now you have changed it so that each party must file a notice of termination. In other words, you have to have sort of consent, which means the relationship between the parties is one where if they are not getting along well together they are going to have to visit legal people presumably and get this thing filed. Is that right? They can do it separately or whatever but they certainly still have to come together to agree on this.

**Mr Wessenger:** I will let the counsel answer that.

**Ms Pilcow:** Subsection 3i(1) requires each of the parties to give the notice of termination and they do it individually when they come to know the circumstances which would justify termination of the order. Subsection 3i(2), if you look at the original draft, contemplates the circumstance where the parties agree and subsection 3i(3) where they do not agree. This just imposes the obligation on both parties to advise the director's office when they know that the order has been terminated. It may only be one of them who ever finds out or has the knowledge of the circumstances. The regulations are going to set out when the obligation arises and that obligation will arise when the circumstances are known.

**Mr Sorbara:** I really want to apologize for arriving late. I am actually here not as a member of the committee today because someone is subbing for me, and I appreciate that and I am going to be leaving soon. You will all be glad to hear that.

I do not know, and perhaps you can enlighten me, Mr Chairman, whether counsel or legislative counsel or anyone has given an explanation of how the new subsection 3i(1), which is an amendment to an amendment—my goodness, I remember when Shelley Martel used to criticize us for hours when we were considering Bill 162 for making amendments to the amendments and now here on this simple little bill giving SCOE a few more powers we have to make an amendment to an amendment. But so be it, okay.

I raised a point yesterday and you were good enough to take it back and stand it down and take the point and bring forward a new draft. I guess this does it. I would like to study these words a little longer, and I probably will do that on my own time rather than bore you with an extemporaneous study of it. But from looking at it, it seems like you have solved the problem.

I do not know if you have solved this problem right the way through. In fact, as I looked at some other of your amendments I think you have made this mistake here, there and elsewhere in the act. The reason I think you have done it is because it is so inconceivable that you would even draft a bill that says you can have a support deduction



order even though someone has signed a notice saying that he or she does not want you to enforce the support order. That is so silly, so inconsistent, so inappropriate that I tend to think the drafters, as they went through the act, did not realize they would be having to confront this inconsistency—let's call it what it is, this stupidity—without directing their minds in each occasion to the fact that existed.

I want to tell you the truth. I would have preferred if the parliamentary assistant and counsel of the ministry and the director or the director's representative and legislative counsel could have come back here and said: "The member for York Centre is right. We've got to get rid of this inconsistency in the act." I would not have minded, frankly, if you had said, "We are going to insist that all support orders be filed with the director." That, to me, is universality, and as a Liberal I understand the importance of universality in some instances. I do not think I would have objected to that as much as I object to what is here, which is a suggestion that you can get out of the support order—that is, you do not have to file it—and yet we are going to enforce a support deduction order.

I see that the Chairman is wrinkling his eyebrows a little bit, so I will get back to the—

**The Chair:** Are you on the amendment to the amendment, sir?

**Mr Sorbara:** Yes, I am. By the way, on this amendment and the termination, we have to get on with this stuff. I wonder if the parliamentary assistant will confirm with me that the branch is really working towards a 1 January implementation date for this. Can I get an answer to that?

**Mr Wessenger:** I think the branch is working for as early as possible.

**Mr Sorbara:** Paul, let's not be equivocal on this, because I—

**Mr Wessenger:** It is all going to depend on when the bill is in final form.

**Mr Sorbara:** No. I do not want to be insulted in that way. Yesterday I spoke with counsel for the branch who, in answer to an honest question from me about when you were planning to implement, gave the date of 1 January. And I understand that, because I brought a bill like this through the Legislature, and you have to be working towards an implementation date. Every branch of government does.

I do not mind taking the criticisms in the House from the Premier about what we are doing in this committee, but you have to be fair and upfront with me and tell this committee when you plan on implementing the bill. You cannot pretend that it all depends on how quickly you get it through this committee. That is unfair to us and it is inappropriate and I am offended by that. Just be upfront with me.

**Mr Wessenger:** I am not aware of the date of when it is going to be implemented.

**Mr Sorbara:** As the parliamentary assistant, you should be.

**Ms S. Murdock:** When the bill was introduced for second reading, it was mentioned that if all went well and it went through committee and it went through third reading, etc, they were planning implementation by late fall.

That was what the plan was. Mind you, that was on the supposition that it was not going to be quite so long in committee. So we do not know now; it may be 1 January by the time we get through with this.

I would also like to remind the member that in this committee, and I am quoting from the Tuesday 19 March paper, he said, "It serves my purpose, you might notice, that I am using some rather crude delay tactics." So you are. So to be self-righteous in this instance is not really fair going here.

We are telling you that there are delays here that in many instances are unnecessary when supposedly all three parties are in support of this legislation or at least stated that. In regard to the argument that has been used that we did the same when we were in opposition, we made no bones about certain bills that we totally opposed and, yes, we delayed, there is no question of it. But this bill, for three parties that support it or claim to support it and then to delay on minor things—major issues, fine, but—

**Mr Elston:** Just a minute, now.

**Ms S. Murdock:** No. There have been major delays here unnecessarily, and stated specifically by the member.

**Mr Sorbara:** Mr Chairman, I just want to tell the member for Sudbury—

**The Chair:** Mr Sorbara, can we return to the motion—

**Mr Sorbara:** We certainly can.

**The Chair:** —your amendment to an amendment?

**Mr Sorbara:** No, it is not my amendment to an amendment.

**The Chair:** Well, it was in response to your concerns, sir, yesterday. We have talked about implementation date and various other things, but that is not relevant to the topic here.

**Mr Sorbara:** It is at the heart and soul of what is going on here.

**The Chair:** The heart and soul of what is going on here is this page which was just distributed.

**Mr Sorbara:** No, it is not, and I am sorry to say that, but it is not. We are as anxious to get on with this bill as you are. My friend Mr Elston has an amendment to bring forward dealing with cost of living increases and changing the act so that SCOE is in a position to enforce cost of living increases.

1550

My friend Ms Murdock is trying to suggest that the date of implementation of this bill, the proclamation date, has been adjusted and amended based on our consideration of it in that committee. If that is the truth, I would like someone from the ministry or the parliamentary assistant simply to testify to that effect.

**The Chair:** Anything further on 36a? Anything further on this section? All in favour of 36a?

**Mr Sorbara:** Mr Chairman, you are not talking about 36a. When you say "36a"—

**The Chair:** We are talking about the motion, the amendment to pages 35 and 36, which I am referring to as 36a—

**Mr Sorbara:** There is nothing on my paper which says 36a.

**The Chair:** —which reads that “the motion be amended by striking out the proposed subsection 3g(1). . . .” Anything further on this particular amendment?

**Mr Carr:** The only thing I would say is that I guess I, through a lot of amendments, have gone through and I have talked and we have tried to convince it. I am not going to participate any more. I am going to vote very simply and move things through as quickly as possible. The reason is because I resent being accused of holding up something when I have tried to participate as best I could to try and bring the procedures through, so you will not hear anything more from me.

Motion agreed to.

**The Chair:** Back to 35 and 36, which was the main amendment. It has already been moved. I think you already discussed it at the outset.

**Mr Wessenger:** Yes.

**Mr Elston:** It has something to do with this and it has something not to do with this. I know the Chair probably thinks that some of our stuff was pretty minor with respect to some of the things that we have talked about here. We made a minor change to this thing. Perhaps it is minor, perhaps it is major. Perhaps it is minor to consider letting more money go to the people who want it; perhaps it is not such a minor consideration when we have asked to amend the bill.

I just want to join the issue that some of the things that we have brought forward here I certainly feel very strongly about. I realize that you may have orders to get this done and okay, but I was prepared to talk at length about some of the things. I am not prepared to receive some lecture from somebody in the—not you, from the Premier, who has not been here to follow some of the legislation and the material that was brought forward here for us to consider, about us holding things up. I happen to feel very strongly about whether people are going to be able to afford to work their way through this legislation. I feel very strongly about whether people should be placed in second priority to the consolidated revenue fund, and I feel very strongly that here is some work that was done by my colleague the member for York Centre that presumably is going to strengthen the bill, or at least sort out some of the problems, as we have amended this section 3g as it is being proposed for amendment by the Ministry of the Attorney General.

I just wanted you to know that because you think it is not maybe as big a deal for our amendments to be debated and talked about, I do think it is a big deal. For me it is a big deal and for the working of this thing it is a big deal, and it will be a big deal when I talk about the administration of cost of living allowance and other things. I know the ministry believes it already has it covered but I want it to be firmly on the record that it is going to be in a position to actually administer this thing in a real and effective manner.

So, Mr Chair, I thank you for your deliberate listening to my complaint here, because it is not right on topic, but I could not resist replying to my friend the member for Sud-

bury, who I think has missed the point of our concern on a number of the areas which we have talked about, so let's get on with this thing. I am not going to go to the same extent as my friend the member for Oakville South. I will continue to participate and I will continue to speak at the times when I think it will be appropriate.

I believe with all my heart that it will not make any difference whatsoever because we will be voted against, and that is fine. That is the way this committee happens to be numbered and structured, but that does not prevent me from speaking my piece and I will not be told by the Premier that we are holding it up when we know that the earliest possible date this bill was even going to be put into effect was in the fall and now we hear it is going to be perhaps 1 January.

That is fine, but to have some piece of superfluous, some kind of dizzy interpretation of how quickly the ministry can move to implement it used as an excuse for not doing other things is just beyond my comprehension of fairness. I will not sit quiet when somebody accuses us of doing something that is furthest from the truth that can possibly be. We were not going to get this until the fall at the very earliest. You know that and Sharon has just confirmed that. It may be 1 January, and the Premier talks about us holding the thing up. I am just fed up with that kind of stuff.

**Mr Wessenger:** I would like to say something here too. There have been amendments accepted by this committee from both the Conservative caucus and the Liberal caucus and you have both made contributions to this bill. I acknowledge your contributions and I have no problems saying that. So I think we should just continue on proceeding and I encourage you, Mr Carr, to continue on proceeding, contributing to the debate.

**Mr Sorbara:** As much as we are talking about termination, and this section is termination, I have a word or two to say about termination. I, like Mr Carr, would like to simply say: “Look, I don't give a damn what you want on this bill. You'll get it. I don't have anything more to say. Pass it as you will.” But this just happens to be a test, because it is your first bill, of the style of the new members.

I admit there are times when governments and opposition parties go to war on bills. Ms Murdock's former boss, now the Minister of Northern Development, the member for Sudbury East, and I went to war on a bill called Bill 162. It was all-out war and she, the member for Sudbury East, was a great battler. I think all of us stood up in the House when the war ended and congratulated her and some of my caucus members congratulated me when the war was over. It was vicious at times and positions were taken and we dug in our positions. There were amendments to the bill. They naturally arise, but the positions were dug in really firmly. What surprises me on this bill is that it is not part of the fundamental policy of the government. What surprised me every single day is why a government that professes that it wants to listen and be open and flexible is taking such a dug-in position on a bill that is just part of the ongoing stuff that any government would be doing at this time in the life of a Parliament in 1991.



**Ms S. Murdock:** On a point of order, Mr Chair: We are supposed to be on 35 and 36 and we are still talking about government style. I would like to go on to the amendments.

**Mr Sorbara:** If you do not want to hear me out, I will find the next flaw in 35.

**The Chair:** We will discuss page 36. Mr Elston.

**Mr Sorbara:** I am sorry, Mr Chairman, I think I had the floor.

**The Chair:** No, sir, you do not.

**Mr Sorbara:** I had a point of order. Put me on your list.

**The Chair:** You will be, sir.

**Mr Elston:** Can I ask why it is necessary to have clause 4, which talks about order to repay, when in fact that is what would happen anyway? If somebody has overpaid, you get an order to repay, right? Why is it in here, because SCOE is not presumably going to be doing that, are they? Sorry, not SCOE any more, I am on the old name. Can you tell me why it is here? Let's do a thorough clause-by-clause of this just for a brief moment. I am not going to hold you up, just to answer the question.

**Mr Wessinger:** This is a clarification clause, I am advised.

**Mr Elston:** What is it clarifying?

**Mr Wessinger:** The court has the authority to order the repayment.

**Mr Elston:** Of course it has any authority. Anybody knows that. If there has been an overpayment between two people to a contract, which is all this is really enforcing, you get them to repay, so why would you make that statement? Is it not rather redundant?

1600

**Mr Wessinger:** What you are saying is that there is another provision in the bill that says the same thing?

**Mr Elston:** No. Basically, under a contract, if I overpay and the person refuses to pay me back, I sue them for the return of the overpayment. So why have you done this? You are just telling the court what they can already do. I do not understand that.

**Mr Wessinger:** I think we do say a lot of things in legislation so the rights are more set out in full, even though it may not be legally necessary to consider every provision.

Also there is the aspect that if the court is of the opinion that the person ought to have notified the director, there is no—it does not deal with a straight question of an overpayment, basically.

**Mr Elston:** But it talks about—

**Mr Wessinger:** There could be a situation where an overpayment is made and the recipient was not aware that it was an overpayment and received it.

**The Chair:** It is not an overpayment, it is an extra payment.

**Mr Wessinger:** No, it is an overpayment, after the obligation was terminated. It is an overpayment, and if the

recipient was not aware that it was an overpayment, then the court—

**Mr Elston:** Excuse me. If it has already been terminated, presumably the recipient already knows about that.

**Mr Wessinger:** No, the recipient may not be aware it has been terminated.

**Mr Elston:** Why?

**Mr Wessinger:** Perhaps I will—

**Mr Elston:** Yes, I think you should.

**Ms Pilcow:** The terminating event may not be that clear. The terminating event would usually be within the knowledge of the recipient, but what if the child is living outside of the home and the terminating event is when the child is no longer in full-time attendance at school? The recipient believes the child is, the payor finds out that the child is taking one course at a time. So the recipient continues to receive funds and continues to mail those on to the child, not knowing what the payor knows. In those circumstances, the recipient can be ordered by the court to repay—

**Mr Elston:** It is fairly remote.

**Ms Pilcow:** It is not that remote, actually, because some terminating events are actually quite complex. It is usual that the recipient knows and the payor does not, but this ties in to the obligation in subsection 1, which is a new obligation on both the payor and the recipient to advise of termination. This tells the recipient that you do have an obligation to tell the director when you know your order is finished that, "My order is no longer applicable." That obligation did not exist before and this makes it very clear to the recipient what the ramifications of not notifying are.

**Mr Elston:** Should this section also include an obligation on the branch to make a payment back to the payor if it has mistakenly made an overpayment, as well?

**Ms Feldman:** The whole point of the section itself is to allow the branch to have more notice than it ever did in the past with respect to possible terminating events. There are more grey areas than one could ever imagine on the terminating event for support order. In the case of full-time attendance at school, somebody who attends school for four courses for a semester might by the recipient be interpreted as being in full-time attendance, but not by the payor, who has the same information, and it requires a court interpretation. So this does allow the program itself to continue to receive funds when the parties themselves cannot agree and the program cannot interpret what full-time attendance at school is in the grey areas, and the court can interpret. Once that court does make the decision, of course, then the director has to abide by the court decision that the obligation is terminated.

**Mr Elston:** Can I ask then, further, since, "The director shall continue to enforce the support obligation in the manner, if any, that appears practical," what, if any, guidelines are being given to the director with respect to that subsection, bearing in mind that we are really making very full deliberation in this section about what the court shall do when there is an overpayment and otherwise, but we leave it very, it seems to me, open for the director, at her discretion, to decide to continue to pay out the full amount or not to

continue to pay the full amount or whatever. It seems to me that if we are going to tell the courts what to do, we ought to also in this legislation tell the director what to do.

**Ms Pilcow:** Did you just read subsection 3g(6)?

**Mr Elston:** Subsection 6, yes.

**Ms Pilcow:** The obligation on the director is to continue to enforce, in the same way that the director is obliged to force any order, until there is absolute notice that the court decision has been made terminating the obligation.

**Mr Elston:** But it says, "that appears practical." Does that mean that she is to continue making full payment if in fact the dispute is with respect to the amount of money that has been overpaid, and that money may be gone and her obligation to the payor who is asking for the termination to be effected may be that she will be paying money out that will never be repaid to the payor?

**Ms Pilcow:** The obligation on the director is to do whatever the court order requires the director to do—

**Mr Elston:** I understand that.

**Ms Pilcow:** —unless the director gets notice that the order has been terminated or the parties agree. Notwithstanding what the nature of the dispute may be between the parties, the director's obligation comes from the support order so that the director is going to continue to enforce.

**Mr Elston:** Why are you allowing the director to continue to make the disputed—I will call it "disputed"—overpayment during the course of this court proceeding rather than just collecting it and holding it in trust?

**Ms Feldman:** The way the law with respect to support enforcement generally has evolved is that when a dispute is filed by the payor, for instance under a garnishment, the order continues to be enforceable unless the court orders otherwise, so the dispute does not in itself stop the obligation. The benefit does go to the recipient nowadays. That is a change from what the law was in 1986, before this SCOE legislation came into force. This continues that.

That is, I think, the benefit of this notice provision. If there is a dispute between the parties, at least the director is aware that that dispute exists, but the payor will have to establish to the court—that might be by way of an interim motion on his part, but if he is very convinced that his case is right and the support obligation has terminated, the payor has to establish that the support obligation should stop, that the money should stop to flow, and the court will have to look to see whether there is a *prima facie* case. The director will abide by that court decision, of course.

But things are reversed from the way they used to be. It used to be that the filing of a dispute itself was enough to stop the *prima facie* flow of money and then the Legislature, in your time, Mr Elston, actually changed the legislation to benefit the recipient and to put the payor who disputes to the onus of showing the courts that at least he has a *prima facie* case of valid dispute. Otherwise, there are lots of frivolous and vexatious disputes that just stop the flow of funds.

**Mr Elston:** That being the case, maybe what we should be doing is also indicating in another subsection here that the court may order that the director shall discount

against the amounts to be collected any amount that is seen to be an overpayment.

**Ms Feldman:** But I think the point is that what we had hoped to have done by this very section is to put everything on the table. If the payor indicates that it is his feeling—and remember that so many of these terminating events are truly grey areas; they are not black and white, they are difficult: a child of the marriage under the definition of the Divorce Act; full-time attendance at school; children go away to university; the rooms are kept; they come home every weekend; they come home twice a week; they come home for school holidays. Whether the child remains a child is often in dispute.

It is not really the program's mandate to interpret the grey areas that arise so often and yet this section allows the payor to actually say, "I think this child is not a child of the marriage any longer." It allows the creditor to either agree or not to agree and then it allows a decision to be made. The program's mandate, of course, is to enforce the subsisting order to pay out, if the court orders otherwise, and of course payments would be stopped being requested from the payor. And if the creditor ought to have known that the termination has occurred, if it is not a grey area, then the repayment has to be entertained from the person who has received the funds, being the recipient, not from the program that has just acted as a conduit and remitted the funds to the recipient.

**Mr Elston:** It seems to me, then, that a section could be added very well that obliges the court to consider using the branch as a manner in which to offset amounts that are owing if there has been an overpayment. You have said that they can make the order, but why would you not also say that they could go further and require the support deduction order to be amended appropriately until the arrears or at least the overpayment is collected?

The question is really a good one: why did you tell them they have to do certain things but that you did not go to the natural extension of surveying all the options that a court could make under the orders that were possible in terms of re-collecting the entire amount?

1610

**Ms Feldman:** You are asking why the court, after finding that a support obligation is terminated, back some time, has not ordered that the director set off the future payments.

**Mr Elston:** It is an option, right? You have given them some options here. You have told them that they cannot consider certain things, they can consider certain things, they must not consider others. Why would you not say they can consider until the amount is collected having the director set off against the amounts owing the overpayments?

**Ms Pilcow:** The important thing about subsection 4 and the reason that needs to be there is to let creditors and payors know what the ramifications of not giving the proper notice are. The director is not in the position not to know or not to understand.

**Mr Elston:** There really is no ramification that is separate and apart from the payor who has overpaid having to go to court and then trying to collect from the person to



whom he is making the payments. That is the way it is now and there is nothing, there is no ramification for another person being delinquent.

**Ms Pilcow:** Not exactly. The creditor now does not have an obligation to give notice that the support order is terminated.

**Mr Elston:** But what is the penalty if there is no notice given?

**Ms Pilcow:** Repay.

**Mr Elston:** There is no penalty in addition to what there is now. If you are overpaid under a contract, you have to repay that amount. That is quite clear. You take them through the courts and you would say—I do not see what the difficulty is. If you are thinking that this offers some kind of sanction for somebody who has been recalcitrant about giving a notice of a termination event, there is nothing here that is that way at all. Right?

**Ms Feldman:** In your fact situation, I see where you are coming from, and I think that what a court would entertain as part of an order for repayment—the court might consider that a support order be suspended in whole or in part. But the problem with ordering a setoff is that it depends on the person's circumstances, it depends on the circumstances of both parties, and it might be very harsh to say, in a provision, that setoff can be ordered when in fact it is up to the court to decide how best to effect the repayment if it feels the repayment cannot be effected voluntarily. It might be that they suspend the operation of the support deduction order or the support order in whole or in part—actually, only the support order. They could not do that to the support deduction order without doing the support order because that is what would have to be suspended in whole or in part in order to effect repayment.

**Mr Elston:** I do not mind you using that logic with respect to this section, if you also use the same logic with respect to the other sections with which I have had some association during our debate on the clause-by-clause.

For instance, in one area you told the court that it could not consider certain circumstances. In other words, in this section, you are leaving it totally open to the discretion of the court even though you already know some of the options that are available for it to make an order. In other sections of this bill, in 3, whatever it was that we were dealing with, notice of suspending the operation of a support deduction order, you told them they could not do certain things, that they could not take notice of certain things.

My only concern is that if there is consistency with respect to allowing some discretion in the manner in which the court addresses itself to policy issues or—I am sorry; policy issues is not really the right word—issues in dispute as between the parties, why are you not consistent in all of the sections? Why do you not leave it open for them to consider whether the person's circumstances have some role to play with respect to whether it is reasonable or practical not to deal with the suspension, the operation of this bill? If you are going to do it in one section, do it in them all. I do not care how you do it.

**Mr Wessenger:** I think it is appropriate, in this language in this section, that I would not want to fetter a

court jurisdiction with respect to how it is dealing with the variations.

**Mr Elston:** The parliamentary assistant has problems in doing something that would fetter the discretion of the court in this section but he had no problems in fettering the discretion of the court with respect to the circumstances that could be considered when a request was made for the suspension of the operation of a support deduction order.

You cannot deal in the legislation in that way. You are going to let the courts do it or you are not. In this case, when you do not have the sections all laid out in detail, you are going to say, "We will leave it to the courts," but in other sections you have said, "No, we are going to tell the courts what they can agree to talk about and what they cannot agree to." I do not understand your rationale.

**Mr Wessenger:** I can see quite a difference between enforcement of orders and convincing a lawyer.

**Mr Elston:** Yes, but you are the parliamentary assistant, and I guess you are going to do that.

**Mr Wessenger:** Normally in enforcement of orders there is no discretion, in many cases, like writs of execution.

**Mr Elston:** Okay, can I ask at this point then, under subsection 7 and subsection 8 the parties are the parties to the support order, but the director will not be a party to any proceeding to determine the entitlement of any person to support. Does that mean with respect to the amounts that are paid? The director cannot be compelled to indicate how much money has been paid with respect to any of these applications? It seems to me that somebody ought to be compellable out of the ministry to issue things. I presume if the director is not a party, she could then be subpoenaed?

**Mr Wessenger:** Yes. She could be a subpoenaed as a witness. There is no problem there. Being a party is not adverse to any other part of that.

**Mr Elston:** Why could she not be joined if in fact she has made a payment that is sort of out of compliance with what had been agreed upon?

**Mr Wessenger:** I think this is really only in determining the entitlement of any person to support. That is a matter between the two parties. Certainly the director could be a party to something related to anything in the act.

**Mr Elston:** But she could be subpoenaed and she is compellable in this one?

**Mr Wessenger:** Yes, definitely.

**The Chair:** Mr Sorbara?

**Mr Sorbara:** Are we now done with that subsection? I just want to know from my friend Mr Elston whether he has finished his questions.

**Mr Elston:** Yes.

**Mr Sorbara:** That is on subsection 4.

**Mr Elston:** Well, I went right through to 6 and 7.

**Mr Sorbara:** I have a question on subsection 8. Subsection 8 provides for notice to income sources. Remember, income sources are the people who receive notice of the support deduction order and then 14 days after that are required to start making deductions and forwarding them to the director. It says,

"When the director's duty to enforce the support order has ceased"—and this whole section deals with the termination—"the director shall give written notice to each income source affected by a support deduction order that the support order has terminated."

I am confused there as to why the director would want to give notice to an income source that the support order itself has terminated. What business is it of the income source whether a support order between the spouses has or has not terminated?

**Mr Elston:** So they will know whether they are going to have to pay.

**Mr Sorbara:** I could understand the director giving notice to the income source that the support deduction order has terminated. That is relevant to what the income source needs to know about. Would you not agree with me that if we are concerned about privacy, the income source should only be aware of the support deduction order? Can I get sort of four-party agreement around the table on that? Yes or no? Am I right about that?

Interjection.

**Mr Elston:** But you are only dealing with the support deduction order. The support order itself may still be in effect for other reasons.

**Mr Sorbara:** Let's just work this thing through. Do we agree, as a matter of policy, that the income source ought not to have knowledge of the support order, ought only to have knowledge of the support deduction order? Yes or no?

**Mr Wessinger:** Yes, I think that is—

**Mr Sorbara:** Well, then, why ever under subsection 8 would you be sending notice to an income source of the termination of the support order, which is none of the income source's business? In fact, if we are concerned about privacy, he ought not. What are you trying to do here?

Interjections.

**Mr Sorbara:** I am willing to take a five-minute recess if you want to figure it out.

**Ms S. Murdock:** A point of clarification, Mr Chair: The director not being a party, Mr Sorbara? Subsection 8.

**Mr Sorbara:** Yes, we are into subsection 8, that is right.

**Mr Elston:** I am sorry, this is on the replacement sheet. I was dealing with the white ones.

**Ms S. Murdock:** On the yellow? We have moved on to this? Yes, I am on the white ones.

1620

**Mr Sorbara:** Yes, we are on the yellow ones. It is the yellow ones that have been moved.

**Ms S. Murdock:** Yellow. Just a minute. The number at the top right-hand corner is—

**Mr Sorbara:** Let me help out my good friend from Sudbury. The page is numbered with handwritten notes at the top saying "35 and 36 replacement."

**Ms S. Murdock:** Okay.

**Mr Sorbara:** And then if you flip the page, it says in the upper right-hand corner 2. Are you there with me?

**Ms S. Murdock:** All right, I am at it.

**Mr Sorbara:** Just to help Ms Murdock out, that section says:

"When the director's duty to enforce a support order has ceased, the director shall give written notice to each income source affected by a support deduction order that the support order has terminated."

I want to know why. I mean, there are even situations where the responsibility for a support order having terminated, you are supposed to continue enforcing a support deduction order. What business do you have sending an income source information that a support order has ceased?

**The Chair:** Mr Wessinger.

**Mr Wessinger:** We are just considering your proposal here, because I—

**Ms S. Murdock:** Can I just ask a question?

**The Chair:** Mr Wessinger has the floor.

**Mr Sorbara:** I am taking questions now, Ms Murdock.

**Mr Wessinger:** May I just get through clarifying? What you are suggesting is that we say the support deduction order has terminated, rather than the support order has terminated. That is your—

**Mr Sorbara:** No, no, that does not help, because the beginning of the section speaks about the director's duty to enforce a support order, not a support deduction order, so obviously the triggering event is the termination of the duty to enforce a support order. Remember, there are situations where the director has no authority to enforce a support order but has, believe it or not, authority to enforce a support deduction order. Here you are talking about what happens when you lose the authority to enforce the support order, and you are saying that you are going to tell income sources about that. I do not understand why. I do not understand what you are trying to do there. It is none of their business.

**Ms Feldman:** The support deduction order can actually survive, quite apart from the withdrawal mechanism. There can be arrears which continue after the termination of a support obligation—

**Mr Sorbara:** I agree with that.

**Ms Feldman:** —which continues to be enforced through the support deduction order after that support order has been terminated.

**Mr Sorbara:** But, you see, here you might have a situation where the survival of the support deduction order is the empowering element, yet you are talking here about something that the director should do when you lose the authority to enforce the support order. My point is that this is the very thing you should not do, because it is none of the income source's business. Get it?

**Ms S. Murdock:** In relation to that, then again asking you, Mr Wessinger, so far in all the deliberations we have done we have said that the support deduction order can live without the support order if arrears or whatever are causing it to continue to be collected. But we never dis-



cussed the possibility of a support order living without a support deduction order—for the purposes of this act, I mean.

**Mr Sorbara:** Oh, sure it does. May I interject? For the purposes of this act, a support order can live well beyond the end of a support deduction order. Sure.

**Ms S. Murdock:** Okay, I agree with Mr Sorbara, actually, that the—

**Mr Sorbara:** Alleluia. My God, the sky is falling. Everyone under your desks, please.

**Mr Elston:** Just a minute. We need a five-minute recess here.

**Ms S. Murdock:** I agree that unless you can show me that the income source needs to know that a support order has terminated, I do not see any need for him to know.

**Mr Sorbara:** I think we had better have an adjournment and let these folks figure out what they are going to say here. I move a 10-minute adjournment.

**The Chair:** We will have a five-minute adjournment.

The committee recessed at 1625.

1653

**The Chair:** Mr Wessenger?

**Mr Wessenger:** I would like to have this one stood down again.

**The Chair:** All in favour of standing down 35 and 36? Unanimous consent is required. Mr Wessenger moves standing down of 35 and 36.

We are moving on now to 39, the statement which is on the yellow sheet; 37 has been withdrawn.

Mr Wessenger moves that section 3i of the act, as set out in section 3 of the bill, as printed, be amended by adding the following subsection:

“(1a) On a motion referred to in subsection (1), the payor shall not dispute the entitlement of a person to support under a support order.”

**Mr Wessenger:** The purpose of this is that we previously had the words “under subsection (1)” and legislative counsel said we should have “referred to.” So that was it.

**The Chair:** Any discussion?

**Mr Elston:** Can I just have a couple of seconds here?

**Mr Wessenger:** It was not really under that subsection it was referred to.

Interjections.

**Mr Elston:** This is a payor on a motion in the court that made the support deduction order in the appropriate court and motion under subsection 3h(6), and then that is what this amendment—

**Ms Pilcow:** The difficulty was that it was not a motion under subsection 1, it was one of the two motions referred to in that subsection. It is a grammatical change as opposed to—

**Mr Harnick:** Is this the one, a debtor on motion in the Ontario Court (Provincial Division)?

**Mr Kwinter:** It is a payor on motion.

**Mr Harnick:** No, on mine it says a—

Interjection.

**Mr Harnick:** Okay, government amendment, a payor on motion in the court that made the support deduction order?

**Mr Kwinter:** That is it.

**The Chair:** Any further discussion? Mr Elston.

**Mr Elston:** Is there a possibility that some of these issues might be joined together at one time, for instance, maybe a number of motions under various subsections to deal with issues that can be or could not be joined? This would seem to say that this motion would have to stand all on its own if there are a series of issues that had to be resolved in front of a court.

**Ms Pilcow:** No. It is bringing as many motions as are appropriate to one court. That is not something that is dealt with in this legislation.

**Mr Elston:** So you are precluding this item being dealt with at the same time as a motion for overpayment, for instance, is being dealt with? Just so that the whole issue may be joined, you are not precluding somebody from joining this with others?

**Ms Pilcow:** This cannot preclude anybody from bringing as many motions as he wants to at the same time. It outlines what issues are dealt with on that particular motion, but there is nothing wrong with a person seeking all kinds of relief before one judge at one time. They always do that, actually; that is commonly done.

**The Chair:** Any further discussion? All in favour of the motion on page 39? Opposed?

Motion agreed to.

**The Chair:** Page 39(a), the next page.

Mr Wessenger moves that section 3i of the act, as set out in section 3 of the bill, as printed, be amended by adding the following subsection:

“(1b) The director is a necessary party to a motion referred to in subsection (1).”

**Mr Wessenger:** I would just say the purpose of it is to ensure that the director is always a party to these motions.

**Mr Elston:** Except that we just talked about the director not being required to be a party before, in respect of whether a person should be making a collection in the support order or enforcing the support order. I do not understand why the director is a party here, because the issues in dispute, it seems to me, are the question about whether there has been a default. It seems to me the director might appear again as a witness compellable to testify about default, rather than being a party. I do not understand that. What is the difference here and in the previous discussions we had, in other words?

**Ms Pilcow:** The intention under section 3i is that these are motions that in most cases will be able to be disposed of by the director and the payor. So under clause (a) the question would be, “The number in my support deduction order is actually—

Interjection.

**Ms Pilcow:** So the three motions that can be brought into that section, under (a), it could be a question of the numbers being transposed incorrectly or some clerical

error having resulted in the director, for whatever reason, putting the wrong amount in the support deduction order. The intention is not to drag the creditor or the recipient in to dispose of motions of that nature. Under 3d—

1700

**Mr Elston:** And yet the creditor is going to want to have some information about anything that may affect his or her status, it seems to me. Right?

**Ms Pilcow:** They may or they may not. In a question of this nature, if it is a clerical error, the recipient is going to have a great interest in not actually appearing before the court to deal with it. It is a matter that does not really—

**Mr Elston:** No, but if there is a clerical error and my client is receiving \$100 this month and then next month gets \$94, my client is going to want to know what happened and why that is being changed. Likewise, if they are getting \$100 this month and \$200 next month, they are going to want to know what is happening. I do not understand when they might not want to be a party, as opposed to the director being a party, because I do not understand why the director is a party on this one and not a party on the other ones.

**Ms Feldman:** In fact, the disputes contemplated by this section are very much like garnishment disputes, and they are meant to be the summary types of disputes in which the mandate of enforcement, which the director has exclusive jurisdiction over, is between the director, the payor and perhaps the income source from time to time.

The director being a necessary party does not necessarily mean that the creditor cannot be involved, cannot be advised, cannot be informed, although the fact is that because—remember, the director has eight regional offices; creditors are all over the province. What we are trying to do is assist the creditor so that she will not be served and called upon to respond and come to court when in fact it is the director's exclusive jurisdiction to carry out the enforcement mandate.

These disputes are supposed to be specifically with respect to that enforcement, the support deduction order and summary matters that can be dealt with with respect to the court deduction. It does not have anything to do with entitlement or the amount under the support order that is being enforced. It has to do with the support deduction order and what is happening with the support deduction order, so that court cannot do anything that will affect the creditor's entitlement on a section 3i dispute.

**Mr Elston:** But it will affect the cheque, right?

**Ms Feldman:** It may affect the amount being deducted, but it will not be left on the ongoing amount under the support order at any particular time. In other words, the payor might say, "I can't pay this much," with respect to the arrears when arrears are added to the ongoing support. The court will make a determination with respect to that. The creditor's evidence may be needed, and in that case the director will call upon the creditor to give evidence and to assist the director in making the case as to why the arrears should not be reduced on one of these disputes. But that is on a case-by-case basis and it is up to the director to

do that if the director feels it is necessary to have the creditor as a witness.

**Mr Harnick:** Are you saying that if the creditor is receiving, say, \$100 a month in arrears in addition to the amount of the support deduction order and that amount is going to be reduced to \$50 a month because the debtor cannot comply with the \$100, that the creditor does not have to be a party to that motion?

**Ms Feldman:** Under the legislation, it is the director who, for the benefit of the creditor, carries on all enforcement activity and has exclusive jurisdiction to do that.

**Mr Harnick:** But what I am asking you is, if you were going to change the amount of the arrears because the debtor says: "I can't pay \$100 a month. I can continue to comply with the support deduction order, but I can't continue to pay the arrears of \$100, I can only pay \$50," the director attends on the motion but the creditor does not have to be there or does not have to be served?

**Ms Feldman:** That is correct. It is the court that makes the decision based on the payor's financial statement sworn, any evidence that might be led and the director's attempts to keep that order as high as possible, or that enforcement mechanism as high as possible.

**Mr Harnick:** Except that if the debtor says he cannot pay \$100, that he can only pay \$50, and the creditor knows that he can really pay the \$100 and the creditor has evidence of that which the director may not have, and the creditor depends on that \$100 because the creditor has arranged his or her life in a manner that includes that \$100, you are saying that the creditor does not have to be given notice?

**Ms Feldman:** Under the present legislation, the way that garnishment disputes right now work, because it is the director who does this on behalf of the creditor, the director is served. The creditor does not have to be given notice.

**Mr Harnick:** Is that what this amendment does?

**Ms Feldman:** No, it continues the status that exists with respect to garnishment. It does not change any matter.

**Mr Harnick:** So even though the creditor may have evidence to show that the debtor is not telling the truth and the director does not necessarily have that evidence—how can you not give notice to the creditor, who is about to get a lesser amount every month?

**Ms Feldman:** When the director is served, it is often with very short notice, and the creditor—83,000 orders have been filed with the program, and currently the creditor can be quite a way from the director's office. The director, though, does have to respond. In responding to the debtor's allegation, unless there is such short notice that contact is impossible and an adjournment has to be requested, the director's counsel, as a matter of practice, will contact the creditor to ask about any items that would need a response. In drafting a responding affidavit he or she may indicate in a paragraph, "I am informed by Ms Jones and verily believe that..." if that is necessary, or may, if things are a bit more intense than that, call that creditor in and ask her to appear at court and to assist director's counsel in making a case. That is why it is important to keep in mind that entitlement, which is the most difficult issue to



address in garnishment dispute hearings, is not on the table here. These are not entitlement issues; these are financial issues.

Another matter to keep in mind is that the director, in getting a filing from any recipient, gets filing information packages filled out by that person. The recipient is always welcome to write in and to update us, so the hard copy file that appears in the director's office at any point in time should contain whatever current information the recipient has advised the director of, so that the director can carry out its mandate to enforce.

**Mr Harnick:** I hear what you are saying, but the one thing that is clear is that there is no statutory duty on the director to contact the creditor. You are saying that the director should contact the creditor. Sometimes there may not be time or sometimes the time may be short, but surely the director knows where the creditor is. Surely there should be some statutory duty upon the director to notify the creditor that a motion has been brought that could see a change in the amount of money that person is receiving on a monthly basis.

**Ms Feldman:** The statutory duty, Mr Harnick, is to enforce in the manner that appears practical to the director, and the director has exclusive jurisdiction to enforce. I suppose, in so far as compromising the creditor's account is concerned, the director uses all efforts—and that is part of the problems that certain constituents might have from time to time—to be vigorous and to maximize enforcement on a global basis. We cannot be particular in a volume operation to have a statutory duty to contact every creditor in every instance, but whatever manner appears practical would be followed by the director in the particular circumstances.

**Mr Harnick:** My concern is quite simply that if you attend on the motion and there is no such statutory duty and the director comes in and says, "Look, I have not been able to contact the creditor," and the creditor may well see that she is going to get less money every month as a result of this motion, the judge may have no authority to grant an adjournment if there is no statutory duty to contact the creditor. If the creditor is going to get less every month—look, it is your bill—it is their bill. I cannot see that—

**Mr Elston:** Let's find a real owner for this bill.

**Ms Feldman:** The court always has the ability to add any party that it thinks is a required party for any motion, and if in any particular circumstance the court feels—that is why it indicates "necessary." It does not preclude the court from adding the creditor as a party to any particular motion if that is what is required.

1710

**Mr Harnick:** All that counsel for the debtor has to do is show up and say: "I served everybody who has to be served. Let's get on with it. The fact that the director has not done what he has to do or has not notified—why should I suffer? I can't afford to pay this any more. Let's get on with it." Why should the judge adjourn it because the director has not done his job?

**Ms Feldman:** Well, as the necessary party, if the director feels that—for example, in a prosecution, if the crown feels

they have a witness who for some reason cannot be called forward, or they have not had time to brief that witness or be briefed by that witness, then the judge does have discretion to grant or not grant the adjournment. That is the same as here.

**Mr Harnick:** I have been in lots of courts, and when you find out that you do not have your witness ready, very often the judge says, "That's not my problem. I have 30 cases on my list today. If you are not ready to go, then take a hike." It happens all the time. Why should the lawyer not be prepared to run his case? Judges do not run cases, lawyers have to come and be prepared. I am not exaggerating a little bit.

**The Chair:** Anything further on this? Mr Elston?

**Mr Elston:** It is a question, really, of me following the way these things are printed. This amendment is to what used to be 3i, is that correct? So it is now 3e in this printed book, and it speaks about a motion in a court and then it talks about a motion under subsection 3h(6). Our previous 35 and 36 replacement speaks about deleting all of 3g and all of 3h, and I presume it is referring to the 3h that was formerly section 3k.

**Mr Mammoliti:** They are coming to get you.

**Mr Elston:** Yes, okay, that is fine. Before they take me away, I want to know—if 3g and 3h were to totally disappear, that would seem to me to take part of this 3e(1) that we are amending by, what is it, 39a? Yes, I guess it is 39a on these gold sheets, or whatever colour they are described to be. I am sorry, I am just trying to follow what is happening, because if we are taking out all of 3h under the previous 35 and 36 replacement, we are not replacing any of it under your replacement sections. That is a little convoluted, but—

**Ms Pilcow:** If you look at the white amendment, number 37.

**Mr Elston:** Oh, we are coming back.

**Ms Pilcow:** That amendment rennumbers a number of sections. If you look at what is now 3h(6), it is what used to be called 3k(6).

**Mr Elston:** Oh, so—37 is the PC motion.

**Ms Pilcow:** Oh, I am sorry, it is 47.

**Mr Elston:** Oh, 47? I am sorry.

**Mr Harnick:** On a point of order, Mr Chairman: I do not know about anybody else on this committee, but I am sitting here with the reprint to show amendments proposed by the Attorney General, which is a large white book. I am sitting here with the annotated version of Bill 17. I am sitting here with a sheaf of yellow papers. I am sitting here with a sheaf of gold papers, which are all amendments. I am sitting here with three dozen white pages—I guess more. They go up to number 57; I do not know how many there are.

**Mr Carr:** Another single yellow.

**Mr Harnick:** I am sitting here with another single yellow paper. I am sitting here with Bill 17, the small white one after first reading, and I am sitting here with another couple of white pages. I have no idea what section we are dealing with. I have no idea what sections are still

to come. I defy anybody else in this room to tell me what section we are on, where we are going. This is totally unintelligible, and I suggest that we adjourn and come back next week, and hopefully you could have one version with everything in it so we can follow it page by page, number by number. I see 3i is 3g, and 3f is 3h, and I cannot follow any of this any more.

**The Chair:** Mr Kwinter?

**Mr Kwinter:** Mr Chairman, I would like to just add to Mr Harnick's words. I am a substitute. I was here for the public hearings. I have been sitting here, and I like to think that I have some knowledge in these areas, and I agree with him. We have been conferring back and forth, and I was just thinking to myself, I have just got to tune out of this thing because I cannot understand where all these things are. We have been trying to figure out where 3k was, where 3h is, and every time we look at a piece of paper we say, "No, that is not the right piece of paper, it has got to be another piece of paper." I would think—

**The Chair:** Mr Kwinter, perhaps we could have the clerk clarify something.

**Mr Kwinter:** I would think that might not be a bad idea.

**The Chair:** She picked them up, I believe, yesterday, the number of different versions we have, and I think the clerk did make a good point—

**Mr Elston:** Do not try to implicate her.

**Mr Harnick:** Can I say one more thing to Lisa, please? I do not mean to imply that the clerk has not properly provided us with the information we need. It is not her fault. I do not mean to imply that it is her fault.

**The Chair:** Perhaps we could let her clarify whatever it is she wanted to clarify.

**Mr Harnick:** It is so complicated that I do not want to sit here any more because I cannot understand what is going on. I defy anybody in this room to tell me what is going on and what order we are going in. I do not want to continue this until I get a consolidated version of what we are doing because I cannot understand it.

**Clerk of the Committee:** There is only one thing that I would like to clarify in terms of what Mr Harnick is asking for. If you want another reprinted version with everything in it, that only comes out of the ministries, so you would have to ask the ministry if it is willing to reprint and incur the cost of reprinting a whole new set. It does not come out of the clerk's office. I just want to clarify, if that is what you are asking for, it is up to the Attorney General.

**Mr Carr:** We are going to bankrupt the Treasury.

**Clerk of the Committee:** Yes. The reprints are done by ministries with their own amendments.

**The Chair:** The other item that Lisa brought up yesterday was very simply that the annotated version and the updated version, the larger yellow stapled sheet, are not properly before the committee. What is properly before the committee is the original Bill 17 and all these sheets of yellow and white paper.

**Mr Harnick:** That may be so but I cannot follow where we are going and I do not care whether they reprint it or they retype it and photocopy it for us, I just have no idea where this is leading to. I have no idea what section we are doing next. I cannot properly prepare to come in here because I do not know whether we are going to be doing the white pages or the yellow pages or the gold pages or the annotated pages or the big white book or the little white book. It has just become impossible to follow this.

**The Chair:** The only thing we will be doing, sir, will be the yellow pages and the white pages.

**Mr Harnick:** Just let me finish.

**The Chair:** We just had that clarified.

**Mr Harnick:** My impression is that this bill is becoming so complicated that I cannot follow it. I am only hoping that if I get a consolidated version of everything we are doing, it may become understandable again. But I defy anybody else in this room to say that they can do this with this mess, or this conglomeration of papers.

**Mr Morrow:** Just on a point of clarification, Mr Harnick, did you ask for a motion to adjourn during that point of order?

**Mr Harnick:** I do not want to stay here because I do not understand what is going on. I cannot even find the page we are dealing with. I have been looking at 3i and really he is talking about 3e and—

**Mr Morrow:** Mr Chair?

If a motion to adjourn was put on the floor, my understanding is that a motion to adjourn is non-debatable. Right?

**The Chair:** He suggested it but he did not put it on the floor. Mr Harnick, are you wanting to put that motion on the floor?

**Mr Harnick:** All I am asking for, rather than sit here until 6 o'clock looking for the right section and the right page—it is now Tuesday; we do not have to come back here till next Monday. Surely between then—

**Mr Mammoliti:** Mr Wessinger has been trying to tell you where we are at.

**Mr Harnick:** Just a second. I have the floor.

**Mr Mammoliti:** You have had the floor for 20 minutes.

**Mr Harnick:** That may be, and I may have it for 20 more minutes.

**Mr Mammoliti:** He is trying to tell you where we are at.

**Mr Harnick:** May I finish, Mr Chairman?

**The Chair:** If you are raising a point of order I would have to rule on it.

**Mr Harnick:** May I finish making my point of order?

**The Chair:** Go ahead.

**Mr Wessinger:** The only reason I wanted to interrupt is that I would like to help clarify this situation, and what I think would help considerably—the annotated version contains most of the items, but what has been suggested is that we update the annotated version to include all the amendments that have now been made.

**Mr Elston:** I am not sure that is reasonable.



**Mr Wessenger:** I think it is very reasonable.

**The Chair:** I think we should refer to Lisa.

**Mr Harnick:** Can I finish my point of order?

**The Chair:** I thought you had. You yielded the floor to Mr—

**Mr Harnick:** Mr Morrow wanted me to ask Mr Wessenger so I thought Mr Wessenger could solve my problem.

**The Chair:** Could we have the clerk speak to this as well?

**Clerk of the Committee:** One thing that can be done quite easily is—my amendments are all in a binder and the reason that people got them Xeroxed on different colours was so people would know they were new amendments not in the original package. I can Xerox right from the beginning right through to the end with all the replacements in the correct order if that would make things easier for anybody.

1720

The reason all these amendments were numbered 39a was so that you would know it would come after page 39. Sometimes it was written "replacement" so you would pull out the other one. I could do that manually for everybody and give everybody a new package if that would help the matter at all. That can be done within the next two minutes. I can just Xerox the remainder of the package, properly numbered.

**Mr Harnick:** I cannot follow the act and I cannot follow the sections that we wish to amend. I see the amendments but I cannot find the sections that we wish to amend. It is not understandable to me. Is there any way that we can, by next Monday, have a package that goes in order that shows me the sections as they exist and the amendments that we wish to make? I cannot follow this any more.

**The Chair:** I have to rule against your point of order.

**Mr Harnick:** I knew you would.

**The Chair:** On the other hand, I think your point merits discussion. Mr Mammoliti.

**Mr Mammoliti:** I can understand how you feel. Perhaps you feel a little confused from time to time. When I am confused I ask questions, and if I lose my spot at any given time I would ask the Chair where we are at as opposed to—

**Mr Elston:** Oh no. He is more confused than you are.

**Mr Mammoliti:** —saying, "Let's adjourn because I don't know where I'm at." That is kind of ridiculous. I would suggest, Mr Chairman, that the member just ask where we are at and perhaps the Chair could lead him and give him the proper information. If not, perhaps somebody else in the committee could tell him where we are at. I would like to tell him where to go.

**The Chair:** Mr Wessenger and then Mr Kwinter.

**Mr Wessenger:** For the purpose of clarification, we are dealing with 3i that is on page 49 of the annotated version and we are dealing with an amendment to that as set out there on that motion, 3i on page 49. It continues on page 50.

**The Chair:** Okay, we have that clarified. Mr Kwinter?

**Mr Kwinter:** I would like to make a comment on the previous speaker's remark. Again, I do not mean this to be partisan or derogatory, but as members of the government party, your role literally is to sit there and fill the seats. You are not doing anything other than whatever the Chairman says you are voting for. You are not raising any amendments other than the government's amendments.

For the members of the opposition, the very nature of their role is to raise questions. There has not been one single question by that side of a government amendment. Not one. And I am not saying there should be.

**Mr Mammoliti:** That is because we know where we are at.

**Mr Kwinter:** No. I am just saying that you do not know where you are at because you are not even bothering to follow it. You just walk in—no. The point I am making—

**Mr Morrow:** I take offence to that.

**Mr Kwinter:** No. The point I am making is that the government is putting forward amendments, and as members of the government you get your marching orders from the whip. I am not saying there is anything wrong with that. That is the way it works.

**Mr Mammoliti:** That is the way it used to work.

**Mr Kwinter:** No, that is the way it works right now, believe me. That is the way it works.

What I am saying is that the opposition members have a responsibility to raise questions. Every once in a while something comes up and they say: "You know what? You're right." But in order to do that effectively, we have to have some organized way of addressing it and to suggest, "If you have a problem ask the Chairman," is not good enough because a lot of this work is done before we walk in. You do not have to do anything before you walk in. You just have to come in and sit and if something comes up, you can comment on it. But you do not have to do any preparation because the ministry has already done the preparation and you are supporting that. I am not being critical, but from an opposition point of view, our members have to look at this thing and say, "Is that something we can support?" If it is not, we come in prepared to argue it. The only way we can do that effectively, and the only way we can do our job is to at least have a document that makes some kind of coherent sense. I do not think that is unreasonable to say.

**The Chair:** Thank you. Mr Morrow and then Mr Elston.

**Mr Morrow:** Mr Chair, I personally take a lot of offence to what the member just said; that we just come in here and sit. I personally read these amendments and I know my other colleagues from the government side read these amendments. To suggest that we just come in here and sit and vote as we are told to do I really feel is wrong and I do take a lot of offence to that.

**Mr Elston:** Basically, Mr Chair, I think probably in their efforts to try and help us with this, the ministry has helped to confuse us a wee bit by doing the consolidation. The big book is what obviously has taken my mind away. If we probably stayed with the small reprint, I see no reason

to go out and spend a lot of money reprinting anything, and I do not want another consolidation because that will consolidate the confusion.

Despite the fact that Mr Mammoliti can ask the Chair where he is and what time of day it is, I do not feel as confident or comfortable in following the Chair's lead, necessarily, when it comes to telling us where we are at. I would far sooner find my own way through the amendments. But if we actually took—I do not even know what this is describing; second reading, I guess, is it?

**Ms Pilcow:** First reading.

**Mr Elston:** Anyway, it is the bill that was introduced and we are amending that one. I am sorry to have raised all the problems. I have been trying to follow which one of these reprints was necessary for our deliberations. It seems that it would be better to stick with the original and then just go through all of the sheets we were given and try to identify them that way. I do admit that the error was not in trying to confuse us, but in trying to help us through this, to see what the context was. But the context has been obscured by all of these things.

I am quite happy enough to follow along with the official bill as opposed to the consolidation as it then was described and as now has been supplemented by other amendments. Perhaps we can just move forward.

**The Chair:** Legislative counsel?

**Mr Revell:** I just might comment on the blizzard of printed bills as opposed to the rest of the material you have.

This bill with the arrows and the like is a government reprint and is not official, and it probably would be better not to consider it because it is confusing the issues in terms of where we are at.

With respect to the other two copies you have, the small version and the one that is marked on the—okay, some people may have a third one that says, "This bill has been reprinted to conform to the new printing format." Some of these were distributed in some places. The small one and the one that was reprinted to conform to the new printing format are both equally official texts.

**Mr Elston:** That is the one that had the parallel columns with English and French.

**Mr Revell:** Yes, because we went to parallel columns for the English and French to comply with the French Language Services Act. So both of these versions, this one, the smaller version, and this one, are equally authoritative.

I really would recommend that we follow Mr Elston's suggestion that we use either the small one or the big one and we all use exactly the same one. Otherwise, we are on different page counts, we are on different line counts, we are on all sorts of things. So that would reduce the paper blizzard considerably.

**Mr Elston:** Mr Chair, I want to agree with legislative counsel on that and indicate how appalled I am that the ministry has really caused us such great injury. This is certainly holding us back in trying to get this bill done with all due haste.

**Clerk of the Committee:** I just have one suggestion. Instead of using the small bill, because there are no more copies of it available and not everyone has one, I will give everybody a new big one that has no amendments and a new package of the amendments, numbered.

**The Chair:** That is on Monday.

Can we return to the discussion of page 39a, now that those other issues have been dealt with?

**Mr Harnick:** Is that 39a yellow, gold or the white?

**The Chair:** There is only one 39a and it is the yellow.

**Clerk of the Committee:** Gold.

**The Chair:** Yellow or gold; whichever you wish to designate that colour.

**Mr Wessenger:** This is the motion that adds the director as a necessary party to a motion.

**Mr Elston:** May I just raise the issue under 3i? Surely the director is not a necessary party under the first—no, just a minute. In fact, it is the difference between actually being a party to a clerical error and also—I thought it had a part that talked about the actual entitlement that the motion was dealing with, but I may have been mistaken. I may have to just step that down for myself to go back through. If there is anything else, I can raise it later. I thought there was a part here where the director was being a necessary party to a motion that dealt with actual entitlement, but I probably got myself mixed up. I apologize for the delay.

**The Chair:** Any further discussion on 39a? All in favour?

**Mr Morrow:** Excuse me. Can I have a 10-minute bell, please?

**The Chair:** We will have a 10-minute recess.

The committee recessed at 1731.

1732

**The Chair:** We are resuming. We left off on the vote. All in favour of 39a? Opposed?

Motion agreed to.

**The Chair:** I am moving to page 41.

Mr Wessenger moves that subsection 3k(2) of the act, as set out in section 3 of the bill, as printed, be struck out and the following substituted:

"(2) The director may enforce payment under a support order to which this section applies as if a support deduction order had been made if the director considers it advisable to do so and the director shall enforce payment if the person entitled to receive support under the order requests enforcement under this section and the director considers it practical to do so."

**Mr Wessenger:** The only change is that the word "recipient" is replaced with the phrase "person entitled to receive support," since that is the phrase used throughout the Act. It is for consistency that we are making that change.

**The Chair:** Discussion?

**Mr Elston:** May I just ask a question that is not totally on point here but I think it is important for my understanding of the way the act goes? What happens if there has been a payment to the person entitled to receive, for instance, if a payment is made to a former spouse but that person does



not pay on to a person who is in full-time attendance at school and who has a claim, actually, in relation to support?

**Ms Pilcow:** The child, you mean?

**Mr Elston:** The child, yes. Because that would be the person entitled to receive, would it not?

**Ms Pilcow:** The person entitled to receive support is the person named in the support order.

**Mr Elston:** So there is no situation where a payment may have been made to a former spouse who has not passed it on to support the child at school, for instance, which, I guess, could often occur.

**Ms Pilcow:** That is not to say that it cannot happen. It certainly can happen, and the payor's relief is then going to have to be against the recipient to change the court order.

**Mr Elston:** I am just thinking of a situation where the student child, or child student, whatever we want to call him, comes to court and says, "I am not receiving support from the payor," if we use this description. It seems to me then that even though the payment is made, I presume it becomes an overpayment issue with respect to the other spouse, or not?

**Ms Pilcow:** It would not, because the director is doing what the court order directed, paying to the person named in the order. It seems to me that the only relief would then be for the child or for someone, presumably the father or the payor on behalf of the child, to apply for a variation of the order in favour of the child as opposed to the spouse.

**Mr Elston:** Because if there was not a payment made voluntarily by the payor, that child presumably would have an action as against both his mother and father in that case, I guess, if he was not receiving support?

**Mr Wessenger:** Not against his father, no, because normally the support orders always say "shall pay to the to the petitioner or to the applicant."

**Mr Elston:** "On behalf of," though. Okay, just as long as we do not get somebody included in here whom we do not need to look for for complication purposes.

**The Chair:** Further discussion? All in favour of 41? Opposed?

Motion agreed to.

**The Chair:** Page 42 has already been carried. Page 43.

Mr Wessenger moves that subsections 3k(6) and (7) of the act, as set out in section 3 of the bill, as printed, be struck out and the following substituted:

"(6) The payor may, within 30 days of being served with the notice, commence a motion under section 3d in the appropriate court for a suspension of a support deduction order described in subsection (5).

"(7) If a motion has been brought under subsection (6), a support deduction order described in subsection (5) does not come into force until the motion has been determined."

**Mr Wessenger:** This amendment clarifies the original drafting. It is the motion which must be brought within 30

days; the original draft implies that the order itself must be obtained within that time frame. As drafted, the subsection is open to being misinterpreted as requiring that a motion to suspend be determined before the support deduction order comes into force. This makes it clear that only if a suspension motion is brought must a court determination be made before the support deduction order comes into force. So this is really clarification only of drafting, no change in substance at all.

**The Chair:** Discussion? All in favour? Opposed?

Motion agreed to.

**The Chair:** Page 44 is next?

Mr Harnick moves that section 3k of the act, as set out in section 3 of the bill, as printed, be amended by adding the following subsection:

"(10) Despite any other provision of this section, a payor who is not in arrears under a support order on the day this section comes into force and who is making the payments required under the support order shall not be required to make payments through a support deduction order described in subsection (5) unless at any time after this section comes into force he or she, without an explanation that is acceptable to the director, fails to make a payment under the support order when it is due."

**Mr Harnick:** My arguments are the same as the arguments I made under earlier sections, when we had the opportunity to eliminate those people who were paying anyway from an already overclogged system. I suspect that the government members have their marching orders and they will do the same with this amendment as they did with the others. They have to maintain universality and they have to make the system more difficult to operate and include more people in it than is necessary. They cannot allow anyone who is operating even under an order and complying with that order the opportunity to continue to do so without having to become involved in the system and have his income deducted at source and have everything go through the director's office, even when it is not necessary. There is no point belabouring this any longer. It is a reasonable amendment, it is talking about people who already have a proven track record of making their payments and there is no reason to include them in this system.

**Mrs Mathysen:** Mr Chair, I think we would like to consider this carefully. In view of the lateness of the hour, I move that we adjourn for today and come back at this fresh on Monday.

**The Chair:** All in favour of adjournment?

**Mr Elston:** I would like to speak against that.

**An hon member:** I did not think it was debatable, Murray.

**The Chair:** We are adjourned until Monday.

The committee adjourned at 1742.

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## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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 Mammoliti, George (Yorkview NDP) Mr Mills  
 Kwinter, Monte (Wilson Heights L) for Mr Poirier  
 Murdock, Sharon (Sudbury NDP) for Mr F. Wilson  
 Wessinger, Paul (Simcoe Centre NDP) for Mr Winninger

**Also taking part:** Sorbara, Gregory S. (York Centre L)

**Clerk:** Freedman, Lisa

**Clerk pro tem:** Decker Todd

**Staff:** Revell, Donald, Legislative Counsel











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Première session, 35<sup>e</sup> législature

## Journal des débats (Hansard)

Le lundi 15 avril 1991



### Standing committee on administration of justice

Child and Family Support  
Statute Law Amendment Act, 1990

### Comité permanent de l'administration de la justice

Loi de 1990 modifiant les lois  
relatives aux obligations  
alimentaires

Chair: Drummond White  
Clerk: Lisa Freedman

Président : Drummond White  
Greffier : Lisa Freedman

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday 15 April 1991

The committee met at 1539 in room 228.

### CHILD AND FAMILY SUPPORT STATUTE LAW AMENDMENT ACT, 1990

### LOI DE 1990 MODIFIANT LES LOIS RELATIVES AUX OBLIGATIONS ALIMENTAIRES

Resuming consideration of Bill 17, An Act to amend the Law related to the Enforcement of Support and Custody Orders.

Reprise de l'étude du projet de loi 17, Loi portant modification des lois relatives à l'exécution d'ordonnances alimentaires et de garde d'enfants.

Section/article 3:

**The Chair:** I would like to call the meeting to order. What is left on the agenda is the Progressive Conservative motion on page 44, the yellow copies that the clerk handed out on Tuesday last. Mr Harnick.

**Mr Sorbara:** With your permission, Mr Chair, when we last left this room, were we not talking about problems with an amendment that appeared on replacement page 36? Did I miss something?

**The Chair:** We had discussed that, Mr Sorbara, but I believe where we left off was with Mr Harnick about to introduce the motion on page 44, which I am sure he is just about to do.

**Mr Wessenger:** Perhaps I could advise.

**Mr Sorbara:** I would appreciate that.

**Mr Wessenger:** Section 3g was stood down to provide for an amendment to subsection 8. There is now an amendment that has been prepared with respect to subsection 8 which I guess will be discussed at a later stage.

**Mr Sorbara:** Was that not the last thing that we discussed before we left, or did I leave and something else happen?

**Mr Wessenger:** You left early.

**Mr Sorbara:** I see.

**The Chair:** Page 43 was carried and we moved on to page 44 with Mr Harnick just about to move.

**Mr Sorbara:** Just before he does that, can I find out what pages he is working from?

**The Chair:** Page 44 on the yellow copies that the clerk handed out on Tuesday last.

**Mr Sorbara:** I was not given those.

**The Chair:** Lisa is providing you with a fresh copy. Mr Harnick.

**Mr Harnick:** I believe that I moved this amendment.

**The Chair:** I recall you as having done so as well.

**Mr Harnick:** But if you would like me to do it again—

**Mr Wessenger:** I think he moved it.

**The Chair:** If you do not mind, sir.

Mr Harnick moves that section 3k of the act, as set out in section 3 of the bill, as printed, be amended by adding the following subsection:

“(10) Despite any other provision of this section, a payor who is not in arrears under a support order on the day this section comes into force and who is making the payments required under the support order shall not be required to make payments through a support deduction order described in subsection (5) unless at any time after this section comes into force he or she, without an explanation that is acceptable to the director, fails to make a payment under the support order when it is due.”

**Mr Harnick:** I believe that Ms Murdock has a question.

**The Chair:** She may, and unless it is a point of order, you have the floor to explain your rationale for this amendment.

**Ms S. Murdock:** Can I get a clarification rather than a point of order? Is that possible?

**The Chair:** Yes, certainly.

**Ms S. Murdock:** Are these old orders prior to 1985 or orders that are not already in the support and custody order enforcement?

**Mr Harnick:** An order that is not in arrears under a support order on the day this section comes into force. So it would deal with any order existing as of the time this comes into force.

**Ms S. Murdock:** I guess the clarification I need is my understanding was that orders—and this would be yours—prior to SCOE would not be under SCOE. Those that are not already in what was called SCOE and now are not affected by these amendments. Is that not correct?

**Mr Wessenger:** Yes. Perhaps I will let counsel answer that.

**Ms Feldman:** Before the proclamation of this particular piece of legislation, there will not be any automatic application of support deduction on any orders that are filed with SCOE. Then there is the next class of orders that were made before SCOE came into effect which have to be voluntarily filed by the recipient into SCOE.

**Ms S. Murdock:** So if it not already in there, it does not matter what it is. My understanding is correct then that these amendments, should they pass, would not be affected unless they voluntarily ask to have them put under.

**Ms Feldman:** That is correct.

**Mr Harnick:** The purpose of this is to avoid putting these into the SCOE system if there has not been any default while the previous order was in existence. Again, the rationale for doing that is the same as the rationale I set out earlier: that if a person has a demonstrated history of paying and has not needed a government-enforced system



to pay, then why put him into an overburdened system already when he does not need the necessity for this enforcement?

Now, if it turns out that there is default, then the order can immediately be put into the system and processed as every other order within SCOE will be processed once this bill becomes law. I see Derek shaking his head at me again and I see that he has his marching orders. The rule of the day here is universality. We cannot go ahead and let people who have a demonstrated history of compliance with their orders avoid this system. Again, you are just overburdening a system which already cannot handle what it has. Why force these people with a demonstrated history into a system that cannot process what it already has? Why jeopardize the processing of defaults that need personnel to process them? Why put this into the system and make it more difficult?

You heard Mrs Cunningham talking about the ratios of case workers to cases. In some jurisdictions, it is one case worker for 900 claims. Certainly to force these people with a demonstrated history of paying into the system is only going to increase those numbers and it is going to have a detrimental effect on the existing system.

I know I am speaking to deaf ears in many cases because I have attempted to make this argument earlier with similar sections and it has met with no response. The Attorney General has told me that any attempt at lessening the universal characteristic of this bill is not acceptable to the government, even if it means jeopardizing the claims that are already outstanding even further. I somehow do not understand the rationale for that, because it only means that those people, those children who need the money and who are awaiting the enforcement, will be waiting that much longer when all of these additional cases must go into the system for which there is absolutely no reason. No one will be jeopardized by this amendment being accepted. No one will be jeopardized, and if anything, the system will be enhanced. Those are my—

**Ms S. Murdock:** Point of clarification just for Mr Harnick please, Mr Chair.

When you say old orders, old orders to me are the ones that are pre-SCOE. By old orders, are you also meaning the ones that are presently under the SCOE legislation that are not in arrears?

**Mr Harnick:** Pre-SCOE.

**Ms S. Murdock:** Pre-SCOE. But then does this not affect it? If you are already paying and you have not got your order under SCOE legislation, then you are not affected by the bill.

**Mr Harnick:** You would be if someone asked for this to be put in.

**Ms S. Murdock:** Yes, you would.

**Mr Harnick:** Only because the legislation is there, so why would anybody not ask?

**Ms S. Murdock:** The legislation is there now and they are not in it.

**Mr Harnick:** Hopefully this would prevent them from being forced into it and let them continue in the system they were already in.

**Mrs Mathysen:** Just very briefly, Mr Chairman: This is the dance again, and it is muddying the waters. Very clearly, the legislation provides that people will not be entering into the system unless the spouse specifically requests it. Presumably that spouse would have a reason, a concern, regarding the continuance of support. So I do not see how this motion adds anything positive. It only to me suggests another way of creating dissension between spouses. So I am sorry, Mr Harnick. I cannot see that this is going to help the bill at all.

1550

**Mr Carr:** I guess I wanted to get on record with a couple of comments about this motion. The immediate thought that I have and the question that we have got is, why would you want to interfere with something that is already working? Whatever the amount of cases are, if the money is getting into the hands of the children who need it, it seems to me that you are putting a bit of a monkey wrench in if you do not pass this amendment. You have got something that is working, the money is getting into the hands of the children, which, if we remember back, is what the Attorney General, going way back, said was the intent of this legislation: to get the money into the hands of the children.

Clearly, in the cases where the money is being paid, that is happening. So why interfere with it? Why take it out and put it into something that may not work when it is working very fine and well?

I believe that the big thrust should be to concentrate on those not paying. We should focus all of our resources, such as they are—and we know now that the Treasurer said the resources are going to be fairly slim in all areas. So let's not put any more pressure on the people who are already meeting their obligations. Let's spend more time on the ones who are not paying. That is who I think we should legislate for, not the ones, regardless of what the numbers are and how many are out there, who are not in arrears and the money is coming and flowing and going to the children.

The children are getting the money, the spouse and the person making the payments are happy that the money is coming there, so why interfere with it? Why clog those people into the system if they do not need to be there? I believe the people we need to work on are those who are not paying. We need to do whatever we can to make sure the money starts flowing in those cases.

So all we are doing with this amendment is saying is that if the intention is to get more money into the hands of the children, then let's not throw those who are presently meeting their obligation into the system. People who have demonstrated their ability to pay, for whatever reason, let's leave them alone. Do not jeopardize the system if it is working well.

The previous speaker talked about creating dissension between the spouses. Well, what will happen is that if we all of a sudden throw them into a system where they get

automatic payroll deduction, that to me may create more dissension than just leaving them alone. They have worked out their problems. The money is flowing. If you want to create dissension, then the government all of a sudden comes in and says, "Everything is working well, but guess what? We're going to throw a new monkey wrench into this whole process. Now you're going to have to get a payroll deduction through it. You were doing things fine, the kids were getting the money, everything was going well." That is going to create more dissension. Let's worry about the ones who are not paying. Let's leave the ones who are paying and meeting their obligations alone. Let's not concentrate on those people. The money is flowing. The kids are getting the money. That is the intent. Let's not clog up the system with those people. The dissension will happen when somebody who is paying as a result of the present legislation all of a sudden gets a payroll deduction. It throws a monkey wrench into the whole process, and all of a sudden they start going back and questioning possibly the amounts and how it works and so on. I do not think we should do that. If it is working smoothly now, let's leave them out of it. For the life of me, I cannot see why you would not want something that is working well to continue.

Governments are there to try to help situations when there is a problem. If there is no problem, then let's not include those people in the legislation but leave them out of it so that they are not going to be clogging up the system. We do not need government involvement where it is not necessary. Let's focus our resources on those people who are not paying and where we can really start to get some of the money flowing. That is what I think we should do.

My colleague mentioned the case-worker ratio. So now all of a sudden the numbers that go into the system are going to go up dramatically if we include the people who are presently meeting their obligation. Why we would want to do that in a system where, when you read the summary of the recommendations that came through from the people who work there, the case loads are already too high? But we are going to say: "No, sorry. Tell you what. The case loads are already too high, but guess what we're going to do? We're going to throw more of them into them, even though they're already paying."

If they were not paying, obviously we have got case workers who are involved in it, but in the situation where people are meeting their obligations and they do not need any government involvement at all, what are we saying? "You're going to get it anyway. Things are running smoothly, the money's coming through, but guess what?" The government of Ontario wants to throw its two cents worth in and jump into the fray now and interfere in something that is working well. I have always come from a background where, when you need government involvement, it should become involved, but where things are running smoothly, for goodness' sake stay out of it.

You are going to have situations where the money is flowing, the kids are getting the money—the function of the bill is to get the money into the hands of the kids—it is working, there are no arrears, the obligations are being met and we are going to say: "Guess what? It's working a little

too smoothly. The money's getting through already. So what is the government going to do? We are going to try to put a monkey wrench in. We are going to put legislation that is going to put them into the system as well." It does not need to happen.

As we sit here and read the summary of the recommendations, if we really reflect on those that are coming in, I think the overwhelming concern is that we need to have a system that is going to provide money for the women and the children who actually need it. If that is the original intention, why we would not pass this amendment, which is going to leave those payments that are working fine, working as they should, meeting their obligation? Both partners are happy, those paying are happy, those receiving are happy, the children are receiving the money. Without this amendment we are going to throw them into the system along with everybody else.

This is one small amendment that we think would be constructive. I know we were accused by the Premier last week of holding up this bill, so I do not want to talk too long on it, because I do not know if it will work in terms of trying to persuade anybody. But this is one of the things that we try to do in opposition. We try to say: "Okay, the intent of the bill is this, which the Attorney General said is to get the money into the hands of the children. You're meeting that objective already with this group of people, yet we still want to somehow get the government more involved." If we do not pass this amendment, all we will do for the ones that are working well is have the potential to destroy them.

We have the potential for somebody to say, "I was paying my obligations, but now that it's payroll deduction maybe I'll decide to move to British Columbia or not meet the obligation, because I don't want the government involved." What I am saying and what we are trying to do with this amendment is if something is working, you stay out of it. If the intent is to get the money into the hands of the children and it is working, why we think we can improve it any more is beyond me.

This is one of these amendments that we worked a great deal of time on to try to improve the existing legislation. It is not meant to obstruct the process in any way. All we are trying to do is say these are some of the concerns we heard under the pages and pages and summaries that are out there. The vast majority of the people want to get more money into the hands of the children, where it counts. If that is already happening, let's leave them out of the system. There is a pretty good line in there too, "unless at any time after this section comes into force he or she, without an explanation that is acceptable to the director, fails to make a payment under the support order when it is due."

So we have given a catch: You are not going to be included in the system but, and this is a big "but," if you do for whatever reason miss a payment, then you will become a part of it. I can tell you if we do that there a lot of people who are going to say: "I've been meeting my obligations, and guess what? If I don't, I'm going to be thrown in the system." I can assure you, if those people are meeting their obligation the vast majority of them are going



to try to continue to meet their obligations because they know very clearly that if not, they are going to fall into the system.

So here is a system with an amendment where we have made it so that nobody can fall through; there is no way people can get around it. If you are paying right now you do not have to come into the system, and for whatever reason you do miss a payment, then you do fall into the system. We have got them coming and going. There is no way they can get out of it. They are meeting their obligation now, and even if there was a chance that by meeting their obligation somewhere down the road they could somehow get out of it later on, we said, "No, you're meeting your obligation now and if you miss one payment then you go into the system." That is the intent of this amendment, as we put forward in very clear, very simple terms.

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It is a win-win situation. There are no losses here. There is no way anybody can get out the system as a result of this amendment even though he is paying now, because he will know very clearly that if he does he would fall into the system later on. We have got them coming and going. It is a win-win situation.

We are going to make sure the children get the funds, and in the worst possible case, if somebody who is meeting his obligations now for whatever reason down the road decides to not meet his obligation, then we catch him. That is why it says if someone, in the very last line, "fails to make a payment under the support order when it is due," he gets thrown into the system. We did not just say, "Okay, you are meeting your obligations now, but if six months down the road you don't, we're not going to be able to catch you, you're going to have an out." We said, "No, if down the road for whatever reason you do not and you fail to make a payment, then you go back into the system." So it is a win-win situation. We have got it so that they cannot possibly get out, and they will know very clearly that they cannot get out of it.

What we are saying is there is a percentage out there who are paying now, who are meeting their dues, who are working within the system, and let's leave those people alone. Let's concentrate our money on the other people who are not and let's make sure that we focus our energies on those areas.

That is what government is all about, not trying to help things that are already working perfectly. Lord knows, there are enough poor things in this province that we can focus our attention on, but if there is something working well, let's leave that alone and let's concentrate on making sure that those who do not pay, for whatever reason, are the ones on whom we really focus our energy, our time and our efforts, because this amendment is basically a commonsense approach that says if people are already meeting their obligations and are not in arrears, we are not going to throw those people into the system and clog it up any more.

I hope if the members on the government side of this are going to oppose this amendment, they will at least come up with some ideas as to why, so that I can understand a little bit of what it is. That is all I ask: If you are not

going to support this, at least lay it out for me so I can try to understand to the best of my ability why this motion would not go through, because this is one of the motions that we talked about to try to improve the legislation. This is where parties get together, we have the public come in, we have the submissions, we spend weeks and weeks and as a result of that we take that back and try to improve the legislation.

Our party does not want credit for this. If the government feels it is appropriate and it likes this, it can put its amendment in similar to that. It is not a case of any particular party. I believe we have the support of the Liberals on this, if they want to take credit for it, but let's just make the legislation better and let's come out of this at the end of the day and say: "You know what? We listened to everybody. We got the general thrust of the bill and the legislation, which is to get more money into the hands of the children who need the support." Let's concentrate on doing that and not try to worry about getting political points of who made the amendment and who did not make the amendment and no, it is no good because it was not a government amendment. Let's put all that aside and let's try to make the bill better. Let's try to make it so that we do not have a situation where somebody who is meeting his obligation gets thrown in the system, which I fear is going to create more problems.

All it will do is create more dissension between parties right now who have been able to iron it out. Through all the process and through all the anger that goes on through divorces and separation, they have been able to iron it out. The money is flowing. There are no arrears. All the process of going through the courts and all that time they have been able to iron it out in spite of all the odds. The money is flowing. The children are getting the money. Let's not include them in the system.

The only thing I would ask is if there are any members who are not going to vote in favour of this motion, if they could try and outline a little bit of the reason why so I can at least have some understanding of why they would not, because to me this is very commonsense approach. Hopefully, people will vote in favour of my colleague's motion.

**The Chair:** Thank you, Mr Carr. Well argued. Mr Fletcher.

**Mr Fletcher:** First, about the amendment and what is going on, as far as I am concerned this bill is not here to penalize anyone who is paying or has been a good payor. As far as I can see, if you are a good payor, you can have a mutual agreement with the person who is receiving the payment not to be in the system. That is not what we are here for.

You say the system is working well. Whose opinion is that? In your opinion, it works well; in ours, it does not work well. When I look at this amendment, I have to look where it is coming from. It is coming from a party that has caused more hardship in this country than any other party has ever done before, and you are saying it is such a good amendment.

**Mr Carr:** Save that for the media.

**Mr Fletcher:** Why? I am not here for the media. You have caused more hardship than anyone and you are saying that it is good management. What good management? There is no good management as far as Conservatives are concerned.

**Mr Carr:** You move the amendment then.

**Mr Fletcher:** This is not a good amendment. It just causes people to get back into the system more than anything else. It forces people to get back to their lawyer. It forces it the wrong way. What are you talking about, it is good? The system is not working well. What this bill is doing is making sure that the people who are supposed to be getting their payments are getting the payments.

I was at a PWP—in case you do not know what that is, that is Parents Without Partners—meeting about a week ago, and there were 200 or 300 people there. Probably 85% of the people sitting there were not receiving their payments.

**Mr Harnick:** That has nothing to do with this.

**Mr Fletcher:** Most of the people who were there were saying that they have just given up. They do not even fight it; they do not do anything. At least with the bill they are going to—

**Mr Sorbara:** Mr Chairman, the member is out of order.

**Mr Fletcher:** They are going to have the opportunity to get their payments. This amendment would undermine that.

**Mr Harnick:** On a point of order, Mr Chairman: It is quite clear when you listen to those remarks that they just cry out to vote in favour of this amendment. If anything, the nonsense—

**The Chair:** That is not a point of order. Mr Mills.

**Mr Harnick:** —that came out of the member's mouth is indicative of how relevant this amendment is.

**The Chair:** Thank you, Mr Harnick. Mr Mills, you have the floor.

**Mr Mills:** Thank you, Mr Chairman. I do not like to hear Charles and Gary and everyone saying that they are in a total state of despair, that the government people do not listen, that we do not take any notice. Really what it all boils down to is a philosophical difference between the way we think about things, but I can assure you that I listen very intently to what you say. On first flush, when I read that I thought, "It makes a lot of sense." But I want to ask some questions, and I want to ask them through the parliamentary assistant, to let you folks know that these things are thought through, that it is not a flash thing that we are the government and we are going to march on to Zion regardless.

**Mr Sorbara:** On a point of order, Mr Chairman: Before Mr Mills gets through his questioning I just want to give anyone four-to-one odds on whatever amount of money he chooses that Mills votes against this amendment, okay?

**The Chair:** I am not sure that is a point of order, although it is an interesting point. Mr Mills.

**Mr Mills:** To continue, when we look at Charles's amendment or his party's amendment, what bothers me—and I hope my friend the parliamentary assistant is listening to what I have to say and then he can answer. A payor who is not in arrears—what is the track record of these people we are looking at? I could support your amendment, Charles, if I had concrete indication that X number of people for years and years and years have never defaulted, but I do not think that we have got that. It just says—

Interjections.

**The Chair:** Order. Mr Mills has the floor.

**Mr Sorbara:** Amend it, Gordie.

**The Chair:** Mr Harnick, Mr Sorbara, order. Mr Mills has the floor. He is speaking to the amendment before us and not the one which you suggest he amends.

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**Mr Mills:** That, Mr Wessenger, is one of the concerns I have, that "who is not in arrears...on the day this section comes into force," but there are no criteria here. He could be not in arrears but he could have been into arrears many, many times before, but at that time he is not in arrears.

**Mr Sorbara:** "Has never been in arrears." Add that. Add anything you want.

**The Chair:** Mr Sorbara, please.

**Mr Mills:** What I am saying is that we have no demonstrated track record to support this, and that is what worries me. Then we get down to this bit here that says "unless at any time...he or she, without an explanation...fails to make a payment under the support order." Okay, so this so-called good guy, who has always been good, suddenly fails to make an order, but the point in question is that it would take four months to get that right again and what do we do to help the people who have not got any money in the interim?

**Mr Harnick:** Why does it take four months?

**Mr Mills:** It takes at least four months to get this order and to get things moving again.

**Mr Harnick:** Why does it take four months? Do you want to put more people into the system so it will take six and eight months? "Here, you miss one payment, you are back in the system."

Interjections.

**Mr Wessenger:** May I have a chance to speak here now?

**The Chair:** Mr Wessenger.

**Mr Sorbara:** Dispense.

**Mr Wessenger:** Are you going dispense with my speaking?

**Mr Sorbara:** My favourite parliamentary word.

**The Chair:** Mr Wessenger, please go ahead.

**Mr Wessenger:** Anyway, I am not in favour of the amendment. However, I would like to say it is kind of interesting listening to the arguments of the Conservatives in favour of this amendment. If I were to concede that they were correct in some of their arguments, some of the



principles they were arguing about, saying, "We don't want to overload SCOE," and I am not saying I disagree with that principle of what they are saying, I would like to say that first of all I think their motion was probably in response to a proposed amendment that we were going to bring in, which had the word "feasible" in it—"the enforcement where it is feasible"—and that would have hampered the discretion of SCOE to enforce old orders. What we have is a situation where the enforcement branch will have the discretion to enforce old orders where it is "advisable or practical" to do so. So it is discretionary.

I will concede that it probably is not practical to use resources for people who are not in arrears and are paying at the time that the enforcement procedure comes in. I assume the branch is going to act reasonably. I assume they are going to use their discretion reasonably. So in fact we are not going to be bringing everybody into this system, as far as the old orders are concerned. I think by changing that word "feasible" to "practical," we gave the discretion that was necessary to make sure the whole thing is administered sensibly, which I think is the way it should be.

**Mr Sorbara:** As soon as you get back into opposition, with respect, you will say that the system is not operating the way it—

**Ms S. Murdock:** I believe, Mr Chair, it is my turn.

**Mr Mills:** No, I have a supplementary.

**The Chair:** Mr Wessenger, are you finished?

**Mr Wessenger:** There is another problem just with this particular motion, in that the director has to then decide whether an explanation is reasonable or not, and I do not think that is suitable. We now have the whole situation covered with the words "advisable or practical," and I think that is a very workable system and it allows to take into account the points raised by Mr Harnick and Mr Carr.

**The Chair:** Okay, Ms Murdock and then Mr Carr.

**Mr Mills:** I have a supplementary question to the parliamentary assistant.

**The Chair:** Thank you.

**Mr Sorbara:** Mr Chairman, you already called on Ms Murdock.

**The Chair:** Ms Murdock.

**Ms S. Murdock:** Go ahead with the supplementary. I will wait patiently.

**The Chair:** You will defer to Mr Mills? Thank you.

**Mr Mills:** I must admit I am the last one to know all the rules and regulations, because they change not only by the day but by the hour and the minutes.

**Ms S. Murdock:** What rules?

**Mr Mills:** In here. I thought that if I asked the parliamentary assistant a question to clarify something that I asked and he did not do that, the next move is for me to ask a question to clarify that as a point of privilege.

**The Chair:** Do you wish to challenge the Chair, Mr Mills?

**Mr Mills:** No, no. The supplementary is, my sort of question to agreeing with Charles and Gary that if we have

a track record of somebody who has been constantly paying, say for a period of two years, without missing, you are saying that in your scope with this we take account of that anyway.

**Mr Wessenger:** This is that the director will, in my opinion, and it is only opinion, deem it is not practical to use the scarce resources of the branch to bring in support deduction.

**Mr Carr:** If the elected officials do not do it, the bureaucrats will do it.

**Mr Sorbara:** Why don't you decide, Gordie? That is what you were elected for.

**Mr Carr:** These people might be great. We might get another group that is not great. We are leaving it up to the bureaucrats, Gord. Put it in the legislation. Is it my turn, Chair?

**Mr Sorbara:** You were not elected by the bureaucrats in the Ministry of the Attorney General. You were elected by the people of Durham East.

**Mr Carr:** We can put it in there, Gord. We cannot leave it up to them. They are fine people, but do not leave it up to them.

**Ms S. Murdock:** I do not believe that either one of those people has been recognized by the Chair. Is that correct, Mr Chair?

**Mr Carr:** They are called interjections.

**The Vice-Chair:** Ms Murdock, go ahead please.

**Ms S. Murdock:** Thank you, Mr Chair. Since we have been asked so nicely by Mr Carr to make sure that we—if we are going to not support this amendment, he would like us to explain our position as to why. So I am going to do that because I am not going to support this amendment, not because I am a trained seal as has been the accusation in the past little while, but because I really do not believe this amendment will in any way assist the proposed bill.

If you are not registered with the present SCOE legislation—it is still called "SCOE" as of this moment—you are not part of any backlog. You are not part of anything. You are getting along, no doubt, with your spouse and you are paying and you are not in the SCOE system. At any time, with a court order, a request can be made to have a support order registered with SCOE at the present time, at any time. So if my spouse or if I were in the situation where I was paying support, if I were not getting it or my spouse did not get it, he could put it into the system right now. That is the way the system is at the present time.

With Bill 17, should it ever get passed, old orders working fine now will still not be included in the amended legislation. Again, upon request, an old order can be registered, but it is not an automatic thing so this is a needless amendment. The intent of the bill will not be assisted with this amendment, as suggested by Mr Carr, since the new amendments would affect all new orders and those that are presently registered. Those are my reasons why I am not supporting this amendment.

**Mr Carr:** I just wanted to discuss a couple of points, and my friend Mr Mills had pointed out some of the wording

about a payor who is not in arrears. We would be acceptable to making it anything you think can improve it, because what I was getting from it is, the gist of it is you just wanted to improve a little bit on that area. We are saying, let's be open. If you want to include it—not quite like Mr Sorbara said, but if you want to improve the wording of arrears, then by all means let's try to do it. If you have a little bit of a problem with the particular wording, that is what we are here for, to work it out and improve it. If that was the only concern you have voiced, then let's tighten that aspect of it up. Let's put our collective heads together and say, "Okay, a payor who is not in arrears, what can we do to improve that, to make that tight and get the type of people we are talking about?" That is the only thing I would say with that.

To what the parliamentary assistant said, "Oh well, they are going to do it anyway," we are saying, "Let's not leave it in the hands of the bureaucrats, as nice as they may be and as committed as they may be," excluding these particular people who I am sure would be very good. But the two or three people whom we have here, tomorrow they could be all gone and we might have three new people in there. They could have job offers in the legal profession and decide they can make double the money. We could have a new client services manager tomorrow for whatever reason. Elected officials are the ones who should put it in so that we have the intent there, not leave it up to something like the parliamentary assistant says, "Well, we intend to do it and leave them out of the system anyway, but we are not going to put it in the legislation because we trust them."

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All we are saying is if that is the intent, to leave these people out, then as elected officials who are accountable for what we do, let's make sure that there is no latitude in there, that they will not go back into some of these ones. They may not, quite frankly, when they see how long it takes to get this whole thing set up. They are not going to want to do anything more that will give them any more work because, quite frankly, I think they are going to be snowed under until the time my grandkids are in university before they are going to get this thing ironed out.

The fact is that as elected officials, if we want to have an intent—that is why we are elected to proceed with the intent of the legislation and not leave it to non-elected officials who are accountable to no one. We are the ones who are accountable and without getting any personalities involved, because these people might be great, our present director might be great, let's leave the intent by the Legislature so that they know very clearly our intention was not to have anybody who is meeting their payments put into the system.

I am not comfortable in leaving it to somebody saying: "Oh well, don't worry about that. Don't put the amendment in because we're not going to do it anyway." As a Legislature, I think it is our duty to put it in there and make it very clear that we do not want anybody who is currently meeting his obligations to be included in the system. If the only problem we have is a couple of wordings, as my friend Mr Mills says, the payor who is not in arrears, let's

make it a payor who is not in full arrears, or whatever he wants to put in there. Let's tie that up but let's work with the amendment and let's not leave it up to the situation where we say, "Well, I'll tell you what, that's our intent. The director is not going to push those people anyway and we'll leave it up to him or her—in this case her—to decide."

I am saying, as legislators, we have the intent to show very clearly that we do not want those people in there. Let's not leave it to a group that may or may not undertake the wishes of the people who are legislating this law, because once that bill has gone past us, it is in their hands for ever and a day and we have missed an opportunity. If the next director who comes along, maybe three months after the present director pulls her hair out and says, "This is a complete mess. I am quitting. I'm going back to the private sector," the next person who comes in might say, "We want all those people who are in full compliance to be a part of it." And guess what? At that time, we cannot do one thing about it because we have missed our opportunity.

You get very few opportunities to express what you would like to do in a bill before it gets handed over to them permanently. If the only problem you have is, number one, a little bit on the wording, then let's tie up the wording. My colleague and I would be very pleased to see any recommendations in that area, if it is just a payor who is not in arrears that is giving you some problem. Number two, if we are going to say, "I'll tell you what, we are not going to bring those people in anyway, so why bring in this amendment," then let's legislate it.

Let's not leave it up to non-elected officials whom we can never, once it has gone through, push again. Let's make sure it is put in there once and for all. That is our duty, to make the bill as perfect as we can before it is passed over. They have a great responsibility because they have a tremendous amount of latitude in terms of interpretations now, but let's make sure of the intent, which is to not get people in there who are not in arrears. If that is our intent, then let's make sure that they cannot, through this amendment, go back on those people who are meeting their obligations.

Unfortunately, when you look at the arguments that have been made, number one is basically that we are not intending to pull those people in anyway. But let's make sure. I am from Missouri. I do not trust anybody unless it is in the legislation, because notwithstanding the good people we have now, they could be gone in a minute. Let's make sure it is in there so that they cannot get around what the full intent of all three parties is, to leave the people who are not in arrears out.

The other point is, if you are not happy with some of the wording, that is what the clause-by-clause is. Put it in tougher, better wording, put in wording that you are happy with, but do not just say: "We don't like a couple of the lines in there. We like the intent, but oh well, the bureaucrats are probably going to do it anyway, so why worry about it?" And then, "Well, a couple of the words we have some problems with." If you do not like the wording, then let's tighten it up, but let's not let this thing go by because, quite frankly, it is our duty to make sure that the regulations



and the people interpreting this law know very clearly what our intention was.

If we get down the road six months from now, and it will not be this director, but if any other director comes in who is in there trying to pull people into the system and we go back to her and say, "That wasn't our intention," do you know what she is going to say? "You have left discretion to me and I am exercising my discretion and I think they should be in there."

If you do not want it in there, then let's make sure that this amendment passes so that he or she as a director cannot impose his or her will above and beyond what the elected officials want. If we do not put this amendment in, some day down the road it will be the director or the officials in the department who are going to be deciding what goes on; it will not be the elected officials.

**The Chair:** Any further discussion? All in favour of the motion? All opposed?

Motion negated.

**The Chair:** Next is the government motion on page 45.

**Mr Sorbara:** On a point of order, Mr Chairman: I am going to be a few moments on this.

**Mr Carr:** That's it, Gord. I am not voting for any more of your amendments.

**The Chair:** Mr Sorbara is on a point of order, Mr Carr.

**Mr Sorbara:** What Mr Carr is saying is important as well. Give him time to make the point.

On a point of order, Mr Chairman, if I sound a little despondent on this point, the truth is that I am a little despondent about how we are proceeding in this committee. My point of order is going to be a recommendation in fact that the parliamentary assistant move a motion that can perhaps break the logjam, and I hope that you will consider this with the sincerity that it is put forward. I would move the motion but under the rules I am not permitted to move the motion.

Two things have happened over the past two weeks that have caused me a lot of concern. First are the allegations made by the Premier and others that we were holding up support payments to people who needed them. The Premier referred to—

**The Chair:** That would be a point of—

**Mr Sorbara:** No, this is—

**The Chair:** If it is not related to any comments in the—

**Mr Sorbara:** No, this is a specific point of order, and I am working towards a recommendation under the standing orders that can maybe break the logjam for us. I felt very offended by that, as I think some of my colleagues did, but that is politics.

**The Chair:** No doubt, but there were not any allegations made here, sir.

**Mr Sorbara:** No. But that is politics and I understand that.

The other thing that has made me really despondent about whether or not we are going to get anywhere is what is going on in the House right now. The government is seven months into a five-year mandate and it has already taken the unusual step, sometimes necessary, of bringing forward a time allocation motion to move legislation.

**The Chair:** Mr Sorbara, we only had one motion in most committees and that was defeated by the government members, including the Chair.

**Mr Sorbara:** Yes. You might just check with the clerk and determine whether or not it is appropriate for you to be interrupting me and cross-examining me on my point. I think you would find that it is inappropriate in your capacity.

**The Chair:** Mr Sorbara, I certainly have dealt with those issues. The issue with the point of order is that as soon as the Chair has a sense of that point of order—

**Mr Sorbara:** I have not even made the point yet.

**The Chair:** —it is at that point appropriate.

**Mr Sorbara:** Okay. I will get right to the point then, if I can, Mr Chairman. If you will just give me the courtesy of making the point.

I am trying sincerely to move this bill out of committee and get on with it. I feel like we have gone about as far as we can go on this bill. All of the matters that have been raised, most recently by Mr Carr who I think argued another aspect of the same point very clearly, show no matter how much we play with it or jostle about it, that there is going to be no movement.

Under the standing orders, the individual carrying the bill, in this case Mr Wessinger as parliamentary assistant, can move that the committee rise and report. I just want to tell him under this point of order that if he were prepared to move that motion now, certainly I and any of my colleagues that come to vote—and I think the Progressive Conservative members would be willing to support that. In fact, I would look forward to a motion from him. We have tried as hard—

**Mr Carr:** We are really just wasting time here.

**Mr Sorbara:** We have tried as hard as we can to make two or three points in the committee. I for my part have tried to argue that a little bit more flexibility should be incorporated into the bill to allow scarce government resources to be used as effectively as they can and to allow a few people who would be captured by the bill under its current state not to be captured by it in the interest of spending those resources to get the people who right now need the assistance of this agency of the government. I have not been successful in that matter.

I understand why that is. I do not think that legislative committees necessarily have to work like that, and I will tell you quite frankly that one day I hope to see that the way in which parliamentary committees work in this place is very much different. But I accept that now the tradition is that the government has its way when the government has a majority.

There are other things that I would like to have brought up on this matter, but I am now convinced, particularly after the time allocation motion was moved in the Legislature, that

the government is going to brook no interference on the two bills that it is currently considering; that is, Bill 4, being debated right now, at least in terms of the time allocation motion, and Bill 17, being debated here clause by clause. I just want to tell the parliamentary assistant to the Attorney General that, for my part, if he is prepared now to move a motion that the committee now rise and report, we would be willing to support it.

**The Chair:** I do not believe that is a point of order, but it is a very valuable request to the parliamentary assistant on—

**Mr Sorbara:** As a courtesy, I was just wondering whether he is willing to do that.

**The Chair:** Okay, Mr Wessinger. You have the floor for the government motion on page 45 or, if you wish to, I am sure you could respond to Mr Sorbara.

**Mr Sorbara:** As a courtesy, Mr Chairman, I would like—

**Mr Wessinger:** The intention is to proceed with all amendments, complete all the amendments and then report after all the amendments are completed.

**Mr Sorbara:** Can I just make a point, Mr Chairman, on a point of order, that from now on when the government members say that we are not proceeding with this bill, at least they will point out that opposition members suggested a motion in this committee that the committee rise and report the bill to the House so it could be passed for third reading and put into place.

**The Chair:** Your request, I believe, is on record, sir.

**Mr Sorbara:** Well, I hope that—

**The Chair:** Again, though, I do not believe it is a point of order. Mr Wessinger.

**Mr Sorbara:** I hope that Mr Mills hears of it, Ms Murdock—Mr Fletcher I do not care about—Mrs Mathysen and Mr Mills.

**The Chair:** Thank you, Mr Sorbara—

**Mr Sorbara:** At least remind people when they go out on the hustings and give their terrible little speeches about how we are holding up Bill 17—

**The Chair:** Mr Sorbara—

**Mr Sorbara:** —that one member suggested that the committee rise and report and get on with it.

**The Chair:** Your request is clear, sir.

**Mr Fletcher:** It is just getting a little out of hand, that is all. An argument between the Chair and a member is a little—

**The Chair:** I am not sure that that is a very helpful suggestion. Mr Wessinger?

**Mr Wessinger:** I move that section 3 of the bill, as printed, be amended by adding the following section to the act:

“3m(1)—”

**Mr Sorbara:** Excuse me, Mr Chairman, do you know what page he is reading from?

**The Chair:** Page 45. Mr Wessinger?

**Mr Wessinger:** “3m(1) Despite the commencement of a motion under subsection 3c(12) or section 3d, 3e, 3g or 3i, the director shall pay any money he or she receives in respect of a support order or a support deduction order to the person entitled to receive support under the order.

“(2) If a court orders the director to hold any of the money received in respect of a support order or a support deduction order pending the disposition of the motion, the director shall, to the extent the court order requires it, hold any money received after the director receives a copy of the court’s decision.”

**The Chair:** Mr Wessinger moves that section 3 of the bill, as printed, be amended by adding the following section to the act:

“3m(1)—”

**Mr Morrow:** Dispense.

**The Chair:** Thank you.

**Mr Sorbara:** No, we are not dispensed. I want to hear the Chairman read the sections.

**The Chair:** All in favour of dispensing?

**Mr Sorbara:** Can I have a 20-minute bell on whether or not we are going to dispense?

**The Chair:** Mr Sorbara—

**Mr Sorbara:** I want a 20-minute bell on whether or not we are going to dispense with the reading of it.

**The Chair:** Twenty minutes.

The committee recessed at 1634.

1650

**The Chair:** Mr Wessinger moves that section 3 of the bill—

**Mr Sorbara:** Dispensed.

**The Chair:** Is there unanimous consent to dispense?

**Mr Sorbara:** I had my 4:30 meeting.

**The Chair:** Is there unanimous consent?

**Ms S. Murdock:** Yes.

**The Chair:** Thank you.

**Mr Wessinger:** The purpose of this amendment is to provide that money held by the support deduction branch will be held in accordance with the court orders, not disbursed. That is correct, I believe. Yes, so it is just to comply with the court order.

**The Chair:** Okay. Discussion? All in favour of the motion?

**Mr Sorbara:** One second. Give us a chance. Give us a moment, Mr Chairman, to examine the real thrust of the—

**The Chair:** You had 20 minutes, sir.

**Mr Sorbara:** I have a question to choose for the parliamentary assistant to the Attorney General. I just wonder if he could explain how the exception works within the context of subsection 1, which is the empowering section, the section that requires that, “the director shall pay any money he or she receives in respect of a support order or a support deduction order to the person entitled to receive support under the order.” That is the empowering section and there is an exception. Can he describe to us, in his own



inimitable way, how the exception applies within the context of subsection 1?

**Mr Wessenger:** As I understand it, under the present act there is no provision for money to be held by the director? Is that correct?

**Mr Sorbara:** If he wants to refer, Mr Chairman, to counsel—

**Mr Wessenger:** Yes. I will have counsel answer this question.

**Mr Sorbara:** —who is perhaps more schooled in these matters, I certainly would not care.

**Mr Wessenger:** On this particular aspect I think I will.

**Ms Feldman:** The reason for this provision is really to correlate with what presently exists under the rules of the provincial court with respect to garnishment. Right now, if a dispute, for instance, is filed to a garnishment and a payor requests that money be held or that the money not continue to flow so that there would be a chance for the dispute to be heard, the way it works is that the court has to be satisfied that there is at least a *prima facie* case, an initial case, giving reason for that money to be held.

All of these cases that are cited in subsection 3m(1) are along the same lines of a dispute: 3c(12) is a dispute with respect to whether one is an income source; 3d, suspension; 3e, variation; 3g, termination of support obligation; 3i, dispute to support deduction. In all those cases, if the payor seeks a court order that money be held, then under 3m(2) he will have to make a *prima facie* case that there is some sort of validity to the dispute that is filed, to what is being put forward. So the benefit again is to the recipient, to the enforcement of the order as it exists, unless the court orders otherwise. In this way it is quite clear that the payor has to take that step if he wants money held or diverted back to him and everybody knows what role to play in the rather confusing types of initial applications of dispute.

**Mr Sorbara:** You see, there is my problem, because under subsection 1 it appears to me that the responsibility of the director is to continue to pay the money to the person entitled to support. Am I not right?

**Ms Feldman:** That is correct.

**Mr Sorbara:** So a person who has the authority to commence a proceeding under 3c(12), 3d, 3e, 3g, or 3i—I think those numbers are going to get changed, but that is neither here nor there—if someone starts a proceeding, “the director shall pay any money he or she receives in respect of a support order or a support deduction order to the person entitled to receive support under the order.” Where does the court get its authority to direct that money be held by the director?

**Ms Feldman:** On applications, what generally will happen is the court material is prepared and in the course of that material, if the payor is seeking that type of order, which is often the case—

**Mr Sorbara:** That the money be held by the director?

**Ms Feldman:** That the money be held or money be paid back or whatever, depending on what circumstances he finds himself under. Then what will happen is he will

bring an interim motion to the court, generally on quite short notice, to stop the flow of funds or have the flow of funds held or divert the flow of funds. With affidavit material, he will try to establish to the judge’s satisfaction that there is validity in the final claim, or will be, and that there is a reason why she may not be entitled to receive those funds, that the money should be held or diverted.

**Mr Sorbara:** Yes, but subsection 1 says, despite the fact that you commence that kind of proceeding, the director has to keep the money flowing.

**Ms Feldman:** I am sorry. It is despite the fact that the motion as a whole has been commenced under those sections. Then there might be an interim motion as part of that overall motion and the court will make a determination in due course. The director, of course, will comply with the court’s determination, but it is something that the court will have to determine.

**Mr Sorbara:** Can you point me to the section which allows for such an interim order and gives the court the leeway to make that kind of interim order or permanent order during the currency of the motion? In the absence of that, if I were counsel, I would argue under the authority of subsection 3m(1) that no interim order can be made, because on the clear face of the language of the motion, one thing has happened: A motion has been commenced.

**Ms Feldman:** Right. A motion is in the more global sense. I do not have the rules of court with me here, but the rules of court allow for interim proceedings within the context of the overall motion.

**Mr Sorbara:** No doubt about that.

**Ms Feldman:** That is what is being referred to. So the court can order on an interim basis, although it does not specifically say that. That is just a procedural matter that is allowed in the context of the court rules.

**Mr Sorbara:** But would not subsection 1 negate the ability of the court to make such an interim order? In other words, as I understand it, and perhaps legislative counsel can help me out, an interim order can only be made under the larger umbrella of a motion commenced of the type that is referred to in section 3m. So that motion having been commenced, perhaps an interim order is sought.

It appears to me that the court would not have the authority to do something under an interim order that it does not have to do under the main motion and therefore there would be no possibility of the court ordering the director to hold any money received in respect of the support order, etc, as appears under the exception in subsection 3f(2). I am sorry if I am putting you to sleep, Derek. I need some help here, some guidance, counsel, direction.

**Mr Wessenger:** I do not know. This is just as an observation. It is despite—

**Mr Sorbara:** Observations I can do without, but go ahead.

**Mr Wessenger:** But it seems clear that just by bringing the motion you do not suspend the payment of money by the director.

**Mr Sorbara:** No, no, no. Your observation is incorrect, but by virtue of the fact that you bring the motion,

you trigger the empowering provisions of section 1 and require the director—remember, it says, “the director shall pay any money.”

**Mr Wessenger:** That is true, but once you have a court order, that can override the section obviously. A court can always override the section if the court orders.

**Mr Sorbara:** Well, why do we not put those words in? “The director shall pay any money he or she receives in respect of a support order or a support deduction order to the person entitled to receive support under the order except by order of the court” or “subject to subsection (2).” If you added the words, “subject to subsection (2),” I would be comforted.

I realize I am on thin ice here, but it is spring and the ice is going out.

1700

**Mr Wessenger:** I am wondering if you even actually need subsection 2 in there, because the court makes an order. Surely it binds the director, after receiving costs.

**Mr Sorbara:** I am worried about the ability of a court to make the order under subsection 2, given the imperative requirements of subsection 1. I know that Gord is worried about it as well.

**Mr Wessenger:** It might be argued that in subsection 2 it may be to some extent superfluous, but again it is one of these things for clarification. It clarifies the director is not bound until the director receives a copy of the court's decision. That is the point. The way I interpret it, subsection 1 deals with the question of a motion, which has no legal effect. A court order is distinct from a motion. A motion is just the commencement of the proceeding. An order is an order under the proceeding.

**Mr Sorbara:** Let's take the example of section 3d. Someone brings a motion arising out of section 3d. Now section 3d deals with the suspension of a support deduction order. So someone brings a motion, a payor brings a motion or counsel for a payor brings a motion, and as part of the materials the payor, through counsel, is seeking an interim order under the motion to have money held by the director rather than paid through to the recipient, to the beneficiary of the support order.

It seems to me that given the first clause of subsection 1, that is, “despite the commencement of a motion,” the director is required to continue making payments and that precludes the seeking of an interim order to ask the director to hold those payments, because the interim order that is sought would be part of the motion and the section says despite the fact that that motion is commenced, payments have to continue to be made and flow through the director. Am I wrong about that, Don? Am I reading this section incorrectly?

**Mr Revell:** I would argue the opposite, that it is not necessary to put in any additional wording. The section has to be read as a whole, and I think it is clear that subsection 2 is dealing with the particular case of what happens in certain kinds of orders, ie, there can be this situation where the court will order on an interim basis the holding of funds.

If the committee is concerned about the issue, I would think that it could be rectified. I am not concerned, but if the committee is concerned, it could be clarified by putting in, after the reference to 3i in the second line of subsection 1, so that it would read, “despite the commencement of a motion under subsection 3c(12) or section 3d, 3e, 3g or 3i, but subject to subsection (2), the director shall....” I really do not think that is necessary, but if the committee would feel more comfortable with that, then that could be done.

**Mr Sorbara:** If legislative counsel says it is not necessary, I am not going to move it, Mr Chairman.

**The Chair:** Further discussion? All in favour of the motion on page 45? Opposed?

Motion agreed to.

**The Chair:** Mr Sorbara moves that section 3 of the bill, as printed, be amended by adding the following section to the act:

“3n(1) A payor who is required to make payments under a support or custody order or a support deduction order may give additional sums of money to the director to pay to the person who is entitled to receive money under the order.

“(2) The director shall remit money paid under subsection (1) to the person entitled to receive money under the order.”

**Mr Sorbara:** I think it is pretty straightforward. I hope that the folks across the way will support this one. If they do not, it will be very, very weird indeed here.

What does it say? It is that simple. A payor, that is, the person who has to make payments to his spouse—and frankly, I do not know why we have “a payor who is required to make payments under a support or custody order or support deduction order.” Don, are those words not superfluous here?

**Mr Revell:** Sorry, which words?

**Mr Sorbara:** In subsection 1, the way it has been drafted, it says, “A payor who is required to make payments under a support or custody order or a support deduction order.” It seems to me that that is the definition of a payor, is it not? Is payor a defined term?

**Mr Revell:** Yes.

**Mr Sorbara:** Is it? Yes, no, maybe?

**Mr Revell:** Yes, but definitely the problem would be under a custody order. That does not seem—

**Mr Sorbara:** I would entertain the co-operation of the committee to have a friendly amendment to delete those words. Are they necessary, Don?

**Mr Revell:** No, they are not.

**Mr Sorbara:** Do I have a support for a friendly amendment deleting the words? Are you paying attention?

**Ms S. Murdock:** I hear every word.

**Mr Sorbara:** Are you on page 46?

**The Chair:** Mr Sorbara—

**Mr Sorbara:** Most of the time I feel like I am talking to myself, and the Chair, and Charles and Gary. They have their backs turned to me.

**Mr Fletcher:** Only in Guelph.



**Mr Sorbara:** They love me in Guelph.

**The Chair:** Mr Sorbara, the clerk informs me that you can withdraw your own amendment.

**Mr Sorbara:** They think there are provisions in the Ontario constitution for a recall in Guelph. Are they disappointed!

**The Chair:** The clerk informs me, seeing as it is your own amendment, you do not need a friendly amendment.

**Mr Sorbara:** Delete the words "who is required to make payments under a support or custody order or a support deduction order." Eliminate them from your yellow-gold copy. The section would then read, "A payor may give additional sums of money to the director to pay to the person who is entitled to receive money under the order." Now, are you offended by that, my friends?

**Mr Mills:** I have to wait for advice.

**Mr Sorbara:** Gordie, look, you are going to be eligible for a retirement pension pretty soon. For God's sake, take courage. Do you support it or not?

**Mr Mills:** I get one now.

**Mr Sorbara:** Are you already getting it? Holy God almighty.

**Ms S. Murdock:** He was going to retire out of boredom.

**Mr Sorbara:** Have them have a recall challenging every voter who supported you, or get them down to the recall they are putting on over in Guelph.

Let's hear from legislative counsel.

**Mr Revell:** Because of the change there should be just one further change. In striking out references to support and support deduction orders, the words "the order" are now left hanging out there at the end with no reference back to which order we are talking about. It should be "entitled to receive money under a support order or support deduction order."

1710

**Mr Sorbara:** Great. Now that we understand the amendment we are on side.

**Mr Revell:** The section will now read:

"A payor may give additional sums of money to the director to pay to the person who is entitled to receive money under a support order or support deduction order."

**Mr Sorbara:** Let's say you have got—

**Ms S. Murdock:** Piano lessons.

**Mr Sorbara:** This is the piano lesson case, or maybe he wins the lottery or maybe you just want to do something special for someone.

**Mr Fletcher:** Do something special for me, Greg.

**Mr Sorbara:** I will do something special for you, my friend from Guelph. I will support the recall order. As a matter of fact, I will invest in it.

If you have a little bit of extra money and you want to do something for your kids or your ex-spouse or the spouse from whom you are separated, you can give it to the director and the director is obliged to pass it on. Is that cruel and unusual punishment? Do I get an indication from

the powers that be? The government caucus is looking nervous.

**Mr Mills:** Can you not do that anyway?

**Mr Sorbara:** They do not know what the right answer is. Actually, do you know what we should have here, Mr Chairman? On the government side we should have a green light and a red light and someone should press the button to indicate whether they should be supporting or not supporting.

**Ms S. Murdock:** We are not ramming it—

**Mr Mills:** But why do you need an order to do it?

**Mr Sorbara:** We cannot just do it, because sometimes the money—

**The Chair:** Does anyone want to speak to this amendment? Mr Wessenger.

**Mr Wessenger:** Does Mr Sorbara want to speak on it first?

**Mr Sorbara:** All I want to know is whether or not it is okay that they vote for it. That is all. I do not have anything more to say on it.

**Mr Wessenger:** There are some problems with this. I am going to let the director's representative deal with some of the problems. I think first of all that perhaps there is a misapprehension that if the money goes through the director, it is going to be tax deductible. No, it is not. Voluntary payments are not tax deductible. If arrears are owing, an extra payment will automatically be applied to the arrears, so if you make an extra payment to the director and there are arrears owing, it will work through the system. It could be a voluntary payment to try to catch up on arrears, and that would still be worked through the system.

**Ms S. Murdock:** Excuse me, Mr Chair. Just on that point, there is no problem with making a voluntary payment if there were arrears?

**Mr Wessenger:** That is correct. No problem at all.

**Ms S. Murdock:** If there were no arrears, which is what Mr Sorbara is talking about, what would be the point of making a voluntary payment?

**Mr Wessenger:** First of all, the argument could be made, why not make it directly rather than putting it through the director?

**Ms S. Murdock:** Why not make it directly? Maybe you do not get along with your spouse, but you want the kids to have it.

**Mr Wessenger:** The payment can always be made, but you are just putting it in an envelope and sending it off.

**The Chair:** The address might not be accessible.

**Mr Wessenger:** That is right, but you could make it voluntary. You are in a situation where the person does not know the address. In that case, there are particular problems with respect to the computer system, the question of administration, and I am going to hand that over to the director's representative to deal with because I think we should hear his explanation of the difficulties this would involve in a situation where there are no arrears—

**Ms S. Murdock:** There are no arrears and you would be paying beyond the support deduction order.

**Mr Wessenger:** That is right.

**Mr Harrison:** I think the parliamentary assistant has covered some of the points. I should tell you the computer system we have now is designed to administer payments in accordance with the support order. The computer is designed in such a way that when an order is missing, when the payments are missing, it can immediately do what it has to do. It is essential for the program, with such a significant case load, that it ensure records accurately reflect what is owed and what is not owed.

**Ms S. Murdock:** Can I just interrupt, Mr Chair? We do what we have to do.

**Mr Harrison:** We follow the court order. The enforcement agency is mandated to follow the court order.

**Ms S. Murdock:** Correct me if I am wrong, but if we lose the court order or if we lose something on the computer, what do we have to do?

**Mr Harrison:** No, no, sorry. What I am saying is that if a payment is missed, it is automatically recorded on the computer, or if the payor misses the payment.

**Ms S. Murdock:** All right, sorry.

**Mr Harrison:** The task of enforcing the number of orders we have could add extra case load work for us. There is no question about that. Another thing too, as a courtesy to the support payor and the support recipients, we give out on a year-end basis a statement showing what has been paid. They can use that for income tax purposes. We would only record there the payments that have been officially recorded as support under the order we are enforcing.

**Mr Harnick:** What if you had a very smart lawyer who provided in the order that you have to pay whatever it is per month, and in addition you could make whatever voluntary payments you were able to make which would be tax deductible, and therefore you now have a court order sanctioning those voluntary payments so that they would be deductible? What would happen in that case?

**Ms Pilcow:** It would not be tax deductible. In order for it to be tax deductible under the Income Tax Act, the payments have to be made periodic. I am not sure exactly what the wording is, but payments every now and again are not going to be deductible for income tax purposes.

**Mr Harnick:** That is what you say, but I—

**Ms Pilcow:** That is under the Income Tax Act.

**Mr Harnick:** Yes, I mean, I would like to see the income tax people say that if someone was making voluntary payments on a regular basis.

**Ms Pilcow:** If you—

**Mr Harnick:** If I knew I could pay \$100 a month but I might be able to pay \$50 a month if my business was going well, an additional \$50, and I built that in and paid that additional \$50 every month, my bet would be that you could probably get a ruling from the tax department that that was deductible.

What I find interesting, and I do not mean this with any disrespect, but here you are telling us that voluntary payments cannot go through the system because that is going to make more work, and therefore we should not sanction

voluntary payments because the computer cannot do it. But when we bring amendments that say, "Do not bring additional people into the system because it will clog the system and make it more difficult," you are very happy, with open arms, to bring that into the system and not set up a computer that will accept voluntary payments. I find that absolutely absurd.

**Ms Pilcow:** The purpose of the program, and the purpose of the computer being set up the way it was, was to enforce court orders. In order to accommodate payments made at the whim of the payor, the computer system would have to be completely redesigned.

**Mr Sorbara:** That is not true.

**Mr Harnick:** I do not know whether that is true or that is not true.

**Mr Sorbara:** It is not true.

**Mr Morrow:** Well, I believe it.

**Mr Harnick:** But certainly that is not the point. The point is—

**Mr Sorbara:** That proves it is not true.

Interjections.

**Mr Harnick:** You people on the government side, I hate to say it but you really should be embarrassed. Some of the comments that come out of that member are appalling.

**Mr Morrow:** You are challenging her integrity.

**Mr Harnick:** No, I am not challenging her integrity. What I am saying is that we should not be limiting what this bill can do based on what the computer system is set up to be able to do or not able to do. That is not the way you make good law. You do not make good law on the basis of what a computer can or cannot do, but it seems to me that there are opportunities available here and we should be availing ourselves of them.

**Mr Sorbara:** I am sorry I interjected there so strongly to members of the ministry. I just react. I do not like it when we make laws based on what we think our technologies are. The fact is that any computer analyst will tell you that you can rewrite—these guys fairly recently got a fairly new computer system and a new telephone system and I hope this is going to be the salvation of the place. You can rewrite the program very simply to put in *ex gratia* payment, non-tax-deductible and all this stuff. It takes about 15 minutes to rewrite the program to add this in.

You see it in everything you get. Your bank statements now break down interest or break down charges based on a, b, c, d, e and f. All of these things are possible with the assistance of one programmer for about half an hour. I can accept the argument that that is not our business. Our business is to enforce orders only. We do not want to get into the business of handling Christmas gifts and New Year gifts. I thought of that. Okay, that is reason enough.

Some people who came before the committee said, "We would like to be able to do that because we have sent in money before, *ex gratia*, and it has been eaten up otherwise." It makes an interesting debate, but what I am worried about is once again that the government members are just going to hear the signal.

Now this is a very simple one.



If you want the system to be able to deal with these friendly payments, then you can pass this. If you want to only respond to the narrow aspects of the law and the bureaucratic interpretation of the law, you can defeat it. It is your choice.

**Mr Fletcher:** Mr Chairman, could we call for a five-minute adjournment?

**The Chair:** Five-minute adjournment.

The committee recessed at 1721.

1729

**The Chair:** I would like to resume discussion of Mr Sorbara's motion on page 46. Mr Mills.

**Mr Mills:** I think that with this amendment, the government could sit back here and say we are not going to support it. However, I think our integrity demands that we make an explanation of why we are not supporting it. I have spoken with staff and contrary to what we think, as laypeople here not understanding the computers, it is not that easy to change the system because we have millions of people who are going to be on this and you cannot differentiate what is this and what is that.

We have been advised by staff that it would be not only difficult but nearly impossible and it would probably delay the whole program. We have not got the benefit of a computer expert here.

Nevertheless, having said all of that, your theory about giving money is well taken and well received, but there are other ways that you can do that. If you want to give your child gifts, you can set up a trust fund at a local bank and the person can get access to the money there. We are not saying that this is impossible. It is possible, and very easily, through a bank and a trust fund, but at this point in time it is not possible having to go through the system in order to compute a plan; it really is not.

Having said that, I can assure you that I am have a lot of empathy with what you folks are saying, and if I thought that it could be worked, I would agree with you, but it cannot, Greg. That is what we are told: it cannot work.

**Mr Sorbara:** I understand that the government does not want to support this. I would have hoped, Gord, that the defence would have been different. If I were on your side, I would have defended or resisted on the basis that: "The Liberal members should understand that the whole thrust of this bill is to collect money to pay, is to enforce orders that have been made by courts, and in that regard to put into place support deduction orders and take that money directly off salaries. We are not in the business of collecting payments for piano lessons and for skiing trips and for holidays. Let somebody else do that. It is not our business. There is no problem with spouses continuing to have an ongoing amicable relationship and to be sending money back and forth and gifts and ski trips, and ski trousers and skis, and payments for piano lessons. We want to encourage that. But the government should not be doing that. That is not what is in this bill. It's stupid for the Liberals to move that amendment."

That is what I would have said. I would have argued against it, because it takes up the time of people who are

paid very well to run a system that is burdened with too much work to do. It takes up their time. Or, "Why do we not collect everyone's Christmas gift and put a government agency into place to distribute it? That is stupid. What the hell are the Liberals thinking of, proposing that sort of amendment?"

**Mr Mills:** We are being more gentle.

**Mr Sorbara:** I think gentleness is passé in politics. I think we just have to start getting courageous and forceful about what we believe in. What disappoints me and moves me to rhetoric, certainly not oratory in this case, is a plea that our computers cannot do it. Oh, that was so disappointing, Gord. Our computers—

**Mr Mills:** But it is a fact.

**Mr Sorbara:** It is not a fact. I would like to take any one of these four people and put them on a stand and put them under oath and cross-examine them as to their understanding of computer technologies. Is any one of them a computer expert? No, I think they are all lawyers.

I do not think that any of them has the intimate knowledge and understanding of what technologies are and are not available to do this sort of thing. We have technologies to do just about anything. That is why this would have been simple if you wanted to do it. This was a trick amendment. We did not really believe in this amendment. We do not think the government should be doing this. These are ex gratia type payments. This should go on between spouses. But we wanted to see what your response was, and you failed again because you responded that the computers could not do it. You failed your public responsibilities.

**Mr Harnick:** You said no for all the wrong reasons.

**Mr Sorbara:** But the great socialists of the province plead that the computers cannot do it. Oh my God, what Luddites, what reactionaries. The computers can do anything. We have just set up—

**Ms S. Murdock:** That is true, but at what cost? Here we are in a system that is already costing us far too much money.

Interjections.

**Mr Sorbara:** Order. Mr Chairman, I plead with you for order in this committee.

**The Chair:** Mr Sorbara, go ahead, sir.

**Ms S. Murdock:** You still have 25 minutes to kill.

**Mr Sorbara:** No, I do not. I have three minutes to kill.

The failure of the government members to see through this and to plead—and the answer was given right there. Did you hear the hint? One of the members of the branch said, "By the way, it falls almost outside of the mandate of the bill." Legislative counsel could have made the argument that: "Well, it's sort of there, but really you're dealing with a bill that deals with support orders. It doesn't deal with money that people want to give away to their kids or to their ex-spouses. It's not our business." They gave you a hint, and even then you fell on the technology argument. You failed.

Imagine going back to your constituents four years from now and trying to get re-elected. It will not be Fletcher,

because Fletcher is going to be recalled before then to save the Constitution, but the rest of you are going to go back and you are going to stand up and use it. The people are going to say, "We're poor and we're hungry and we're out of work and we're dispossessed," and you are going to say, "I know that, but the computers can't handle it so we didn't do it." Give me a break.

**Ms S. Murdock:** It is better than changing from Wang to a new system.

**Mr Sorbara:** Sharon, you would have had an opportunity to do something. It is a simple amendment, was it not?

**Ms S. Murdock:** Actually, if I might, I actually thought this was not a bad amendment.

**Mr Sorbara:** There you go, and you got—

**Ms S. Murdock:** I spent at least 10 or 15 minutes over there discussing it with the people. I then discussed it with Mr Harnick on the side, trying to figure out how this could be written.

**Mr Harnick:** Boy, they led you right down the garden path.

**Mr Sorbara:** I plead with you for order.

**Ms S. Murdock:** I am just doing what you are doing. I am learning from you, Mr Sorbara.

**Mr Sorbara:** You are studying from the wrong tutor, my friend.

**The Chair:** Mr Sorbara, you have 15 more minutes.

**Mr Sorbara:** I just want to say in closing, as I wind up my remarks, that now and again the opposition members will place these sort of trick amendments before you. Recognize them for what they are. They are ruses. They do not properly belong in the act. Maybe to learn these tricks you should go back to those little colouring books that say, "Which of these things doesn't belong in this chart?" This is the amendment. This is the one that does not belong in the yellow package of amendments.

**The Chair:** Mr Sorbara, you have clearly pointed out that your amendment was frivolous, and therefore it is out of order.

**Mr Sorbara:** No, no, no, I did not say that.

**The Chair:** It is out of order if it is proposed in a frivolous manner, sir.

Interjections.

**Mr Harnick:** I challenge the Chair at this point.

**The Chair:** You may do so, sir. If you wish to challenge the Chair you may do so.

You, Mr Sorbara, have yourself stated it was proposed in a frivolous manner and clearly that makes it out of order.

**Mr Sorbara:** No, I am sorry. I am going to have to—

**The Chair:** Do you challenge the Chair, Mr Harnick?

**Mr Harnick:** You had witnesses who came and spoke about voluntary payments. How can you possibly allege—

**The Chair:** Regardless of that, Mr Sorbara described his own amendment as being frivolous, as being put forward in a frivolous manner.

**Mr Sorbara:** I said it was a trick amendment.

**The Chair:** A trick?

**Mr Sorbara:** You are losing control of the meeting, sir. I said that it was a trick amendment. I said that there were very good arguments why it ought not to be contained in the bill. I said that in some respects good legal counsel could argue that it is beyond the scope of the bill. Remember, in second reading we debated this bill in principle and we all supported the principle. This falls out of the principle and the scope, because it does not have anything to do with payments made under support. But those people over there made the argument based on computer technologies, and I said they failed because they responded not to the substance of the matter but to the techniques and to the technology. What is really frivolous in this whole exercise is the kind of excuse that these guys gave for not supporting the amendment.

Now, Mr Chairman, look: If this amendment gets defeated it is not going to be the end of the world for me, but I think that we should proceed to vote on it. They are not going to support it. They are not going to support it for technologies. That was the wrong answer. It did not work. The technocrats could do it. The technocrats can do anything, including just about any kind of provision that you would want to put in this bill that would be within the four corners of the bill. But the fact is that you are not going to support it, so we are going to lose another one. But this one we are not worried about. It was a test case. It was the placebo. You guys have failed based on your answer, which was the technology, the computers cannot handle it.

This is terribly disappointing. I think we should proceed to vote on the bill and I would like a 20-minute vote.

**The Chair:** More discussion?

**Mr Mills:** I would just like to comment before we vote—

**Mr Sorbara:** I want to listen.

**Mr Mills:** I am sure you do. I really smelled a rat in this, but out of the goodness—

**Mr Sorbara:** There was no rat. We were serious about this.

**Mr Mills:** —and kindness in my heart, I refrained from saying that you had gone crackers and I blamed it on the computer.

**The Chair:** Any further discussion? All in favour?

**Mr Sorbara:** No, no. A 20-minute bell.

**The Chair:** You are asking for a 20-minute bell?

**Mr Sorbara:** Vote on it next time.

**The Chair:** We will adjourn until tomorrow, at which point we will be voting on the motion.

The committee adjourned at 1741.



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**STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE**

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Wessenger, Paul (Simcoe Centre NDP) for Mr Winninger

**Clerk:** Freedman, Lisa

**Staff:** Revell, Donald, Legislative Counsel







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## Legislative Assembly of Ontario

First Session, 35th Parliament

## Official Report of Debates (Hansard)

Tuesday 16 April 1991

### Standing committee on administration of justice

Child and Family Support  
Statute Law Amendment Act, 1990

## Assemblée législative de l'Ontario

Première session, 35<sup>e</sup> législature

## Journal des débats (Hansard)

Le mardi 16 avril 1991

### Comité permanent de l'administration de la justice

Loi de 1990 modifiant les lois  
relatives aux obligations  
alimentaires



Chair: Drummond White  
Clerk: Lisa Freedman

Président : Drummond White  
Greffier : Lisa Freedman

Published by the Legislative Assembly of Ontario  
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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday 16 April 1991

The committee met at 1533 in room 228.

### CHILD AND FAMILY SUPPORT STATUTE LAW AMENDMENT ACT, 1990

### LOI DE 1990 MODIFIANT LES LOIS RELATIVES AUX OBLIGATIONS ALIMENTAIRES

Resuming consideration of Bill 17, An Act to amend the Law related to the Enforcement of Support and Custody Orders.

Reprise de l'étude du projet de loi 17, Loi portant modification des lois relatives à l'exécution d'ordonnances alimentaires et de garde d'enfants.

Section/article 3:

**The Chair:** Okay. I would like to call the meeting to order. We adjourned for a 20-minute bell prior to voting on the motion by Mr Sorbara on page 46 in your yellow copy.

Motion negatived.

**The Chair:** Mr Wessenger moves that sections 3e, 3f, 3g, 3i, 3k and 3m of the act as considered by the committee in its consideration of section 3 of the bill be renumbered as follows when the bill is reprinted:

First column: section number as considered by committee: 3e, 3f, 3g, 3i, 3k, 3m; second column: section number on reprint: 3f, 3g, 3i, 3e, 3h, 3k; and that all necessary changes be made to internal references in the bill.

Motion agreed to.

**The Chair:** Shall section 3, as amended, carry?

**Mr Wessenger:** There is one subsection we should go back to.

**The Chair:** Was that the amendment to the amendment, or whatever it was, brought in yesterday?

**Mr Wessenger:** Okay. We will leave section 3 to be dealt with later. We will go on to this next one.

**The Chair:** Are there any amendments on sections 4, 5, 6 and 7?

**Mr Sorbara:** We have stuff that we did not do on section 3.

**The Chair:** We did not carry section 3.

**Mr Sorbara:** Okay. We are going to go back after.

**The Chair:** There is still an amendment that came forth yesterday that has to be dealt with.

Sections 4 to 7, inclusive, agreed to.

Les articles 4 à 7, inclusivement, sont adoptés.

**Mr Wessenger:** I move that the motion be amended by striking out the proposed subsection 3g—

**Mr Sorbara:** Hold it. You are reading the wrong one.

**Mr Wessenger:** Did we hand them out? I am sorry. No, we have not handed it out. This is going back to subsection 3g(8).

**Mr Sorbara:** Lisa, how do we get back there?

**Mr Wessenger:** We need unanimous consent.

**The Chair:** Is there unanimous consent?

Agreed to.

**The Chair:** Mr Wessenger moves that the motion be amended by striking out the proposed subsection 3g(8) of the act and substituting the following:

“(8) When the director's duty to enforce a support obligation which is subject to a support deduction order ceases, the director shall give written notice to each income source affected by the support deduction order of any change in the amount to be paid.”

**Mr Wessenger:** The purpose of this is to correct a problem with the originally drafted resolution, which is based on the PC motion, which required the director to notify each income source affected by a support deduction order when the support order had terminated. Mr Sorbara raised the problem that there is no reason for the income source to be privy to information regarding the status of a support order. This replacement motion deals with that concern by limiting the information provided to the income source. When the director's duty to enforce a support obligation ceases, written notice must be given “to each income source affected by the support deduction order of any change in the amount to be paid.”

**Mr Sorbara:** This does solve the freedom of information problem. Of course, it does not solve the information problem. There may well be an instance where there are five income sources, only one of which is the subject of a support deduction order and so only one of which needs to be privy to any change in circumstance or change of amount.

I do not think you have solved the problem, but I am not going to dispute it any further. You are not doing the right thing here, but you will probably have an opportunity to fix it in committee of the whole, so just make a note of it.

Motion agreed to.

Section 3, as amended, agreed to.

L'article 3, modifié, est adopté.

1540

**Mr Wessenger:** We have another amendment to section 3.

**Mr Sorbara:** Let's do it in committee of the whole, shall we?

**Mr Wessenger:** We have to stand it down, so we will have to stand section 3 down.

**The Chair:** What? We just passed it. We just carried it. What is this?

**Mr Wessenger:** I would like to move for adjournment for five minutes.



**Mr Sorbara:** Within a few minutes you might be the Minister of Community and Social Services. Get through the bill. Within minutes.

**The Chair:** You need five minutes?

Interjections.

**Mr Wessinger:** Okay, well, let's move on to another section. We will just stand this down, then. That is the best way. We will stand down section—

**The Chair:** You cannot stand it down; it has passed. We have to reopen section 3 with unanimous consent, because we did not have the amendments in front of us.

**Mr Sorbara:** We will get to those in committee of the whole, I suggest.

Section/article 8:

**The Chair:** Mr Wessinger moves that subsection 10a(4) of the act as set out in section 8 of the bill as printed be struck out and the following substituted:

“(4) A sheriff who receives a request for information about the amount owing under a writ of seizure and sale in respect of a support order from a person seeking to have the writ removed from the sheriff's file shall promptly give notice to the person who filed the writ of the opportunity to file a statutory declaration under subsection (1).”

**Mr Wessinger:** Does anybody want an explanation? As a result of consultation with the sheriff's office it was originally suggested that subsection 10a(4) as drafted was too limiting and did not contemplate all the circumstances in which the sheriff would be required to remove a writ from his file. The sections requiring the sheriff to give notice of the opportunity to update a writ were separated from the section outlining the circumstance where the sheriff must remove a writ from his or her file.

Motion agreed to.

**The Chair:** Mr Wessinger moves that section 10a of the act as set out in section 8 of the bill as printed be amended by adding the following subsections:

“(6) A sheriff shall not remove a writ of seizure and sale in respect of a support order from his or her file unless,

“(a) the writ has expired and has not been renewed;

“(b) the sheriff receives written notice from the person who filed the writ to the effect that the writ should be withdrawn;

“(c) notice is given under subsection (3) or (4), a statutory declaration is subsequently filed under subsection (1) and the writ, as deemed to be amended under subsection (2), has been fully satisfied; or

“(d) notice is given under subsection (3) or (4), 10 days have elapsed since the notice was given, no statutory declaration has been filed under subsection (1) since the giving of the notice and the writ has been fully satisfied.

“(7) A statutory declaration may be filed under subsection (1) by telephone transmission of a facsimile of the statutory declaration to the sheriff along with a cover page that contains the following information:

“1. The sender's name and address.

“2. The date and time of the transmission.

“3. The total number of pages transmitted, including the cover page.

“4. The telephone number from which the statutory declaration is transmitted.

“5. The telephone number of a person to contact in the event of transmission problems.

“(8) If a copy of a writ of seizure and sale has been delivered by the sheriff to a land registrar under section 137 of the Land Titles Act and the statutory declaration is filed under subsection (1) in respect of the writ, the sheriff shall promptly deliver a copy of the statutory declaration to the land registrar and the amendment deemed to be made to the writ under subsection (2) does not bind land registered under the Land Titles Act until a copy of the statutory declaration has been received and recorded by the land registrar.”

**Mr Wessinger:** The purpose of this is to set out the circumstances—

**Mr Sorbara:** Dispensed.

**Mr Wessinger:** Does anybody want to hear it? It is really the question of removal of the writ, when certain circumstances have to be satisfied before it is removed.

**Mr Sorbara:** I am wondering whether the phrase “telephone transmission of a facsimile” is going to be relevant two or three years from now when facsimiles are transmitted directly into the telecommunications system. Somebody will challenge the transmissions down the road.

Motion agreed to.

Section 8, as amended, agreed to.

L'article 8, modifié, est adopté.

Section/article 9:

**The Chair:** Mr Wessinger moves that section 9 of the bill as printed be amended by adding the following subsection:

“(1) Subsection 11(1) of the act is repealed and the following substituted:

“(1) When a support order that is filed in the director's office is in default, the director may prepare a statement of the arrears and the director may, by notice served on the payor together with the statement of arrears, require the payor to file in the director's office a financial statement in the form prescribed by the rules of the court and appear before the court to explain the default.”

**Mr Wessinger** further moves that subsections 9(1) to (3) of the bill as printed be renumbered as subsections 9(2) to (4).

Motion agreed to.

Section 9, as amended, agreed to.

L'article 9, modifié, est adopté.

Section/article 10:

**The Chair:** Mr Wessinger moves that section 12b of the act as set out in section 10 of the bill as printed be amended by striking out “3k” in the third line and substituting “3l.”

Motion agreed to.

Section 10, as amended, agreed to.

L'article 10, modifié, est adopté.

Section/article 11:

**The Chair:** Mr Wessenger moves that section 13b of the act as set out in section 11 of the bill as printed be amended by adding the following clause:

“(ca) prescribing classes of persons and information to be supplied to the court and the manner in which information is to be supplied for the purposes of subsection 3a(4);

“(cb) prescribing deductions for the purposes of subsection 3c(10).”

Motion agreed to.

1550

**The Chair:** Mr Wessenger moves that clause 13b(e) of the act as set out in section 11 of the bill as printed be struck out and the following substituted:

“(e) governing the form and posting of security by a payor under section 3d and the realization thereof.”

**Mr Wessenger:** This is just adding to what can be prescribed by regulations.

Motion agreed to.

**The Chair:** Page 55, Mr Sorbara?

**Mr Sorbara:** Forget it.

**The Chair:** Are you withdrawing it?

**Mr Sorbara:** I can withdraw it?

**Clerk of the Committee:** Yes.

**Mr Sorbara:** Withdrawn.

**The Chair:** Page 55 withdrawn.

Mr Wessenger moves that clause 13b(f) of the act as set out in section 11 of the bill as printed be amended by striking out “3i” where it appears and replacing it with “3j.”

Motion agreed to.

Section 11, as amended, agreed to.

L'article 11, modifié, est adopté.

**The Chair:** The clerk informs me that we have a few amendments left, a couple which will be circulated. So perhaps we can have a five-minute recess.

**Mr Sorbara:** I do not think we need a recess. I have some remarks to make on the upcoming section and on section 14. That should give the folks enough time to get their act together or, failing that, they can do it in committee of the whole, I think.

Section/article 12:

**The Chair:** Mr Poirier's motion, page 56a.

Mr Sorbara moves that the French version of section 18 of the act as set out in section 12 of the bill as printed be struck out and the following substituted:

“18. Le titre abrégé de la présente loi est Loi de 1985 sur les obligations alimentaires envers l'enfant et la famille.”

**The Chair:** Legislative counsel informs me that there is an identical—

**Mr Revell:** I think the package has just been passed around, has it not, Mr Chair?

Interjection.

**The Chair:** No, we are still discussing it. Mr Revell brings up a point. I do not see the—

**Mr Sorbara:** Is this not clever? Ha, ha, ha. Is this not clever? After all the speeches that I made about child and family support and the lies that we are being told, now they are going to call it the Family Support Plan Act. I will blow it away.

Interjections.

**Mr Sorbara:** Mr Chair, I have a motion on the floor.

**The Chair:** You do, sir.

**Mr Sorbara:** It gives the bill a French short title. Are you asking that I withdraw that?

**The Chair:** No.

**Mr Revell:** Can I just clarify where we are at just so we will understand? The motion that Mr Sorbara has read into the record and which is now on the floor is complementary to amendments that were made previously that were moved by Mr Poirier to pick up the element of obligations towards the family and to children. Now there is a government motion that is being proposed but has not been moved. I am not going to explain the reasoning behind it, but the substance of it is that it is also here and it changes the name from the present title of Child and Family Support Act to simply the Family Support Plan Act, 1985. Then, while the French version has not been distributed, there would be a complementary amendment made automatically in the French version because of the way the House operates. I can give you how that would read if the government motion went ahead. It would read, «Le titre abrégé de la présente loi est Loi de 1985 sur le régime des obligations alimentaires envers la famille.»

**Mr Sorbara:** Mr Chairman, I appreciate that explanation. I think what I should strictly do is have a friendly withdrawal of my motion and let the government simply move the motion that gives this bill an even more outrageous title than the office and even more outrages me.

**The Chair:** So you are withdrawing 56?

**Mr Sorbara:** My motion is meaningless, really, because as Don has said, there is going to be a different title and that will automatically trigger a different French title, so there is no use having it on the floor. In the time that we have left, let's get the new title moved.

Are we all listening, class? Are we listening? Okay. Whoops. I have got a problem. Well, I will save my final remarks for section 14.

Just to help things out, Lisa, are we allowed to move all of these amendments at once, that is, 1a, 4a, 5b, 56b and 57b? No?

**The Chair:** No.

**Mr Sorbara:** Okay. Well, why does the parliamentary assistant not just quickly move them?

**The Chair:** Are you withdrawing 56a?

**Mr Sorbara:** With unanimous consent.

**The Chair:** I do not think it requires it.

**Mr Sorbara:** I have withdrawn my motion—chucked it.

**The Chair:** And 57a, which is along the same lines? Are you withdrawing 57a as well?

**Mr Sorbara:** That was my motion, was it not?

**The Chair:** No, 56a.



**Mr Sorbara:** Okay. I will chuck both of them.

**The Chair:** We still have Mr Harnick's motion, page 57, in this group, and now we are going to the motions that were presented to us a few moments ago, 56b in the package that was just handed out, which is essentially what Mr Sorbara's motion would have dealt with.

**Mr Sorbara:** Do you mean then we are not going back to 1a, 4a and 5b?

**The Chair:** We will when we have finished the other part as well.

**Mr Sorbara:** Is it necessary to have unanimous consent to go back to them?

**Mr Wessinger:** Yes, it is.

**Mr Sorbara:** Then you can do that in committee of the whole and just deal with 56.

**The Chair:** Okay, 56b. Mr Wessinger.

**Mr Wessinger:** Page 56b. Even with this we are going to have a conflict.

**The Chair:** Can we have a recess for five minutes?

The committee recessed at 1601.

1613

**The Chair:** I would like to call the committee back to order. We are dealing with the government motion on page 56b.

Mr Wessinger moves that section 18 of the act as set out in section 12 of the bill as printed be struck out and the following substituted:

"18. The short title of this act is the Family Support Plan Act, 1985."

**Mr Wessinger:** The purpose of this amendment is to change the name of the act because of the submissions made by several people from the law profession, also the judiciary, because of the confusion with the Child and Family Services Act. We are responding to that concern by changing the name so it will not be confused with the family services act.

**Mr Sorbara:** It is getting very late in the day. Nevertheless, I just want to once again lose my temper on amendments like this. There is a word missing, and it is "order," and the word "order" should go in after "support."

What is going to happen is that your members are ultimately going to pay for this. They are going to pay for this because politicians always pay for the hypocritical step that they take, whether in government or in opposition. You see, what is going to happen is that some reporter is going to report one of these days that the Legislature has passed the Family Support Plan Act. That is going to be the headline and that is all they are going to read. They are going to think, as a result of that headline, that the government has done something unusual or special to help now support families, particularly families that are in need of support.

This bill does a lot of things—and I am glad we are finally getting to the end of it—but what it does not do is provide the kind of support that our families need. It gives a branch of government one pretty strong weapon to make sure that orders that have been made by the court are

fulfilled. You are going to pass this and you are going to try to get a little bit of political play out of the fact and you are going to put it in your householders, no doubt: "We passed the Family Support Plan Act. That's one of the things we did in the spring session. It took us a long time to get it through." And in your speeches you will say some awful things about me and the way in which I have handled certain amendments to this bill. But I do not mind that. What I mind and what I resent and what I resist is this kind of nonsense.

Take a survey. Go and talk to your constituents. What do people want from their politicians but just honesty, just being forthright, just doing what you said you were going to do? This does not do it and I am sorry to see it, but I understand the realities of what is going on and so I am not going to say anything more about it.

**The Chair:** Any further discussion? Shall the government motion on page 56b carry? Carried.

**The Chair:** Shall section 12, as amended, carry?

Section 12, as amended, agreed to.

L'article 12, modifié, est adopté.

Section 13 agreed to.

L'article 13 est adopté.

Section/article 14:

**The Chair:** Mr Wessinger moves that the bill as printed be amended to add the following section:

"14a. Section 39m of the act, as enacted by section 14 of this act, is repealed and the following substituted:

"39m. Where an employer contravenes section 39l, an employment standards officer may order what action, if any, the employer shall take or what the employer shall refrain from doing in order to constitute compliance with section 39l and may make an order to reinstate in employment the employee concerned, with or without compensation, or to compensate the employee in lieu of reinstatement for loss of earnings or other employment benefits."

**Mr Wessinger:** The purpose of this amendment is to have some remedy in the case of an employer dismissing an employee with respect to a support deduction. So this gives the right of reinstatement, and also it changes and removes the \$4,000 limit. There is normally a \$4,000 limit on the amount that may be awarded and this removes that limit. This has been at the request of the Ministry of Labour.

**Mr Sorbara:** Mr Chairman, notwithstanding these amendments that have removed the \$4,000 limit, this section I think is perhaps the most outstanding example of the way in which politicians can get caught in their own hypocrisy and in their own rhetoric.

1620

The incumbent Minister of Labour, during consideration of Bill 162, with all of the drama of a wounded Shakespearean character, would shout and scream at me sometimes during question period in Parliament that a section almost identical to this one that I had—I am sorry, I made a mistake. It was in Bill 114. I can just hear him now. He would use the phrase, "It's not worth the powder to blow it to hell and the minister knows it." And then there was an election and that same man, the member for Hamilton

East, crossed the floor, put on the mantle of the Minister of Labour—

**Mr Morrow:** About time.

**Mr Sorbara:** —and has the audacity to suggest in this act that the sanction against the employer should be almost in the same words. If they were not almost the same words, it would not be so offensive, I would not find his support of this amendment to his own legislation so repulsive, but he preached all over the province that this protection for Sunday workers and the sanctions against employers were not worth the powder to blow it to hell. Here it is right here, not three months later, after he becomes the Minister of Labour and he has his own bills amended in the very terms that he rejected out of hand.

You should have heard his speeches, they were outrageous, how employees would be coerced by evil-minded employers. They would be dragged into the stores on Sunday, they would be chained to the counters, they would be forced to work the cash registers because our Sunday protection bill was not worth the powder to blow it to hell.

Now, a few months later, when we need a sanction in this bill, we need to tell employers they are prohibited from discriminating in any way against an employee against whom there is a support deduction order. In other words, you cannot fire him, you cannot dismiss him, you cannot reduce his salary, you cannot change his hours, you cannot punish him because he is paying the obligation to his wife, so you have to put a sanction. But he takes those very words and puts them in this bill and has the audacity to support them as the Minister of Labour.

What are the people to believe? What are the people who voted for Bob Mackenzie to believe about his commitment to what he says as a parliamentarian? I support this section. I think you need a sanction. I think the sanction will work. In fact, I think 95% of the employers would not discriminate in any event. They would simply receive a support deduction order and put it into place and they would respect the privacy of the individual and they would respect the sensitivity of the matter. Just because they have to make one more deduction on a paycheque, I do not think they are going to be moved to fire or discipline the employee and I think that was the case with 95% of the retail employers in respect of Sunday shopping, but Bob Mackenzie said differently. Bob Mackenzie said that the majority of employers were bad guys and that the sanction we were putting in the law was not worth the powder to blow them to hell.

**Mr Mills:** I think it is different.

**Mr Sorbara:** You cannot have it both ways. I do not want to be interrupted, I tell my friend the member for Durham East, because I am almost done and we are almost done, but to me this is the final offence and the final affront, that he would not even bother to do what he says he believes in as Minister of Labour and that is to put in a harder sanction, a firmer sanction, a greater penalty against the employer. After all, if you really believe what you say, it should be reflected in what you do and I am terribly disappointed that the Ministry of Labour has chosen not to put in a stronger sanction.

With that, I want to tell my friend the parliamentary assistant that I will support this sanction and get on with the taking of the vote on this amendment.

Motion agreed to.

Section 14, as amended, agreed to.  
L'article 14, modifié, est adopté.

Sections 15 and 16 agreed to.  
Les articles 15 et 16 sont adoptés.

Section/article 17:

**The Chair:** Mr Carr moves that section 17 of the bill as printed be amended by adding at the end "which day shall be at least six months after the day on which this act receives royal assent."

**Mr Carr:** As we heard, the reason for this is that during some of the discussions it will take that period of time before all the regulations are put in place. The government does not plan to move ahead with this until that time. During some of the discussions with the director, if my memory serves me correctly, she talked about trying to gear up for January of next year as the date she was looking at. That was the hoped-for date to get everything included in there and I think that was at the time when we were looking at maybe excluding some of the people who are already in the system but are not in arrears. They are going to have to be included now.

This particular amendment is going to give the time necessary to make sure it gets done properly so that we do not have the legislation come through and have the people who are going to be affected scrambling around to try to make it work before the proper time has been allotted to getting it done correctly. Six months is probably the minimum time it will take to do that. That was the aggressive, optimistic stance and I suspect it will be a little bit longer than that, so we put that in.

Through some of our discussions with some of the people who came before the committee, there was also some concern to let some of the people know who are going to be affected by it, ie the employers. We heard some of the situations. I guess it was the one group from the Canadian Payroll Association which talked about having to have computer systems that are going to have to be changed in businesses now to meet the time frames that were put in place. We did not improve the amendments that wanted to extend some of the time frames to three weeks.

I think we settled on 14 days so we are going to have the computers readjusted. What we had hoped to do with this amendment was to allow for all the parties concerned enough time to realize what is coming down the pipe and to bear accordingly. If not, what is going to happen and what has happened in the past too many times for bills that attempt to get pushed through for whatever reason, good reasons or whatever, is that they get off on the wrong foot, we get behind and we will be looking at a situation where our friends from the department there are playing catch-up. Hopefully this amendment is going to alleviate that problem and allow employees and employers, individuals affected, the government, to be able to get the time frame in place,



to put the things in place to do it properly. That was the reason for the amendment.

**The Chair:** Thank you, Mr Carr. Any discussion of the PC motion, page 57?

**Mr Wessenger:** Yes. I do not think we should tie ourselves down particularly on the question of royal assent, because it is quite probable or quite possible that there is going to be a public-awareness program before royal assent is given. So I would not support the amendment.

**The Chair:** Okay.

**Mr Carr:** I guess that puts the kiss of death on it.

Motion negated.

Section 17 agreed to.

L'article 17 est adopté.

1630

Section/article 18:

**The Chair:** Mr Wessenger moves that section 18 of the bill as printed be struck out and the following substituted:

"(18) The short title of this act is the Family Support Plan Amendment Act, 1991."

**Mr Wessenger:** The purpose of this is obviously to change the name in compliance with the change of name of the act.

**Mr Sorbara:** Mr Chairman, if you will indulge me one more brief speech, I am just going to take the opportunity under this section to make my final comments on the bill and in a sense wrap up the debate in committee on this bill and say goodbye to all of you, at least say goodbye to the bill as we send it off back to the House. If I had planned my life more effectively, I would have brought, for the purposes of these remarks, a passage or two from Shakespeare, Shakespeare's ability to end a play, wrap it up and let it go in a puff of smoke and say: "It was all a fantasy. It was all just like players on a stage."

**Mr Harnick:** This is a tragedy.

**Mr Mills:** All the world's a stage.

**Mr Sorbara:** Mr Chairman, you are losing control of the meeting.

**The Chair:** Mr Sorbara, will you speak to the motion please.

**Mr Sorbara:** Yes, I will. I just beg your indulgence for a moment. I did not do that. While we are deliberating, in the midst of an article called Who is 'Them,' I just quote this passage for your consideration: "Ultimately our wealth and wellbeing depend on the value that the world places on the work that we do, on our skills and our insights."

All of you I think have been—what is the right word?—you have been great fun to sit with on this committee in consideration of the bill. Although for you it is perhaps a brand-new experience, I must say that for me as well this is my first experience considering the bill as a parliamentarian in a committee of the Legislature and I have thoroughly enjoyed it. I have enjoyed the debates. I have enjoyed the opportunity to joust with my opposition colleagues, particularly with the government members. I hope you have learned, among other things, that a bill does

not necessarily pass easily in this place even if it is a bill we all agree on in principle.

Just to say one serious thing about this bill, I think we all do agree in principle that we should go ahead with this even though you know I personally have worried about it a lot. I do worry about the state intervening in the private lives of people. I think we all should. You will get to find out, as you develop more experience, that the power of the state is formidable. The state has the power to seize you, to imprison you, to impose the War Measures Act, to take away your children, to take away your livelihood and to confiscate your property. The state has the power to send you to war. The state has the power to bring to the head of a nation a madman like Saddam Hussein who can bring about the decimation of his people. And believe it or not, this small band of us, including the executive council, which is chosen out of the 130 of us, represents the state and we are very, very powerful. Our power is constrained only by the Charter of Rights and Freedoms.

**Ms S. Murdock:** Mr Chairman, on a point of order: Are we discussing section 18 at this point?

**Mr Fletcher:** It is a final farewell.

**Ms S. Murdock:** We have been listening to final farewells.

**Mr Sorbara:** Well, I will stop right now and just say to Ms Murdock or whoever she is—

**The Chair:** Mr Sorbara, the kind of leave-taking you are attempting here is appropriate but usually, when we are discussing the final part, which would be the title of the bill—

**Mr Sorbara:** Yes.

**The Chair:** —which, while this amendment deals with it, we then have to go back to, "Shall the title of the bill carry?"

**Mr Sorbara:** Okay. I do not have very much more to say. Can I sum up in five sentences? I do not want to offend Ms Murdock any more than I have to.

**The Chair:** I think Ms Murdock has a point of order which is legitimate. However, your discussion here, or in one minute's time, I do not think is really pressing. If you are not going to repeat the same discussion, then—

**Mr Sorbara:** I appreciate that I have been a nuisance to the committee, and that they have had some foundation—

**Mr Morrow:** No.

**Mr Sorbara:** I just want to tell you, in the end, I think that apropos of the little quote that I put on the table, I think our work is important, even when we have to use tactics like the ones that we have used here.

**Ms S. Murdock:** We?

**Mr Sorbara:** We, including myself and my colleagues, and you, Ms Murdock, in the sense that your tactic has been to not consider a variation of the bill. I appreciate that. Do you know what? I respect that. I have had occasions where I have had to ram measures through committees. I have, and I understand it, and I understand the role of the opposition now far better than I did during the five and a half years when I sat on the other side of the House.

I want to say a special tribute to these folks who are sitting at this end of the table, who put up with this and put up with the time it takes to consider a bill, and they did it with good humour. They advised the committee well, and I just wish them the best of luck, both through committee of the whole and after the bill gets implemented, and to my Tory colleagues, and even to the Lushers over there who come daily to listen to our debates and who have very strong views on a number of things that we as a Parliament have to consider. But I say to them, and to anyone else who sits through these things, the fact that we can have people come and sit and watch what we do in open court is the heart and soul of democracy.

So, like the bard said, it was all just a play and did not mean anything, and I will now let you know that I am going to support section 18 of the bill.

**Mr Harnick:** I wondered when you would get around to speaking to that section.

**Mr Mills:** Speaking to section 18, I feel like my colleague over there—when I came on this committee, I did not know you, sir. I heard all kinds of rumours about what a nuisance you were. People warned me and they said, in dreaded tones, when we were talking to this amendment, that terrible, terrible Greg Sorbara—

**Mr Carr:** Attention. The Attorney General is here.

**Mr Sorbara:** Are you still in the cabinet, Howard?

**Mr Mills:** I might tell you privately that in my next life, I hope to put a lot of this into book form.

**Mr Carr:** In the humour section.

**Mr Mills:** And I must say, every day you were not here—and I say this truthfully—I missed you. I have learned a lot from you and your caginess and the way you operate, and I really am impressed to be in a room with someone of your debating skills and stature, really. I am not saying that loosely. I have enjoyed the friendship here, in talking about this amendment, learning to get to know people here much better, much more closely. I have enjoyed it and I look forward to further committees where, perhaps, you gentlemen will share with this wonderful—

[Interruption]

**Mr Sorbara:** He is managing my delegates. Every time the government does something, I get a bigger donation.

Section 18 agreed to.  
Article 18 est adopté

1640

**Mr Wessenger:** I would like to ask if we could have unanimous consent to deal with sub 1 of the bill, because there are some changes that relate to the change of name.

**Mr Sorbara:** Mr Chairman, I am not prepared to give unanimous consent, and I will tell you why. The bill is going to be going into committee of the whole.

**Mr Harnick:** It would be out of character.

**Mr Sorbara:** We have not finished with it yet.

**Mr Fletcher:** You had me fooled.

**Mr Sorbara:** We, as a caucus, have decided that we want to give the Attorney General plenty of time to prepare

for the implementation of this bill, but that the House should have an opportunity to debate it for some time in committee of the whole. At that point, a variety of amendments will be brought forward, I am sure, not by us, but by, I suspect, either the Attorney General himself, who graces us with his presence—how marvelous. This is really quite a day. We have been talking about you for a month.

Interjections.

**Mr Sorbara:** Oh, listen now, I have lingered outside the door as my bills were being carried by committee, and popped in every now and again. It is not to be obstructionist or anything like that, but I think now we are trying to complete our work here, get on with it, and we will be in committee of the whole.

For our part, our party plans, not to try and revisit all of the amendments, but simply to send the bill off with a few comments about how we would liked to have seen it. I can assure you that you will not be there for a number of amendments. Those amendments that we wanted to bring to the bill have been discussed in this committee, and they have been defeated. We understand that. The government has a majority, and that is fine, so we will not be bringing them forward. I am sure that Mr Elston, and perhaps Mr Kwinter, and perhaps Mr Poirier, and perhaps some other members would want to say a few words in committee of the whole on this bill as the entire Legislature in its committee form considers it. I deny unanimous consent just so that you will have a little bit of work left to do and we can get out of here this afternoon at a reasonable hour.

**The Chair:** Unanimous consent is denied. Shall the title carry?

**Mr Wessenger:** I would like to ask for another aspect of unanimous consent before Mr Sorbara refuses. This is a section where an amendment was made at his request, so I am wondering if he is going to deny unanimous consent to doing an amendment which is really on an issue that he raised.

**Mr Sorbara:** I do not have a copy of this section. My preference, frankly, Mr Chairman, is to—

**The Chair:** Does Mr Sorbara have a copy of that?

**Mr Wessenger:** Yes, this was distributed.

**The Chair:** It was distributed—10a?

**Mr Wessenger:** Page 10a. Section 3c and—

**Mr Sorbara:** Again, without any malice or without any obstruction to the bill, why do we not just take these amendments, and I will give you my undertaking that as they are moved in the House, I, for my part, as the whip on this committee, will try and have these amendments moved as expeditiously as possible. I will not undertake to constrain my colleagues, who might want to speak on the bill generally in committee of the whole, but for my part, I understand where your amendments are going. If you deliver us a package of the proposed amendments for committee of the whole in a timely fashion, I am sure we could deal with them expeditiously. But I think we are winding down here and ought not to be considering more amendments, particularly as we just passed the title of the bill.

**The Chair:** Are you denying again, Mr Sorbara?



**Mr Sorbara:** Yes.

**The Chair:** Anything further?

**Ms S. Murdock:** Rien.

**The Chair:** Shall the title of the bill carry?

Title agreed to.

Le titre est adopté.

**The Chair:** Shall I report the bill to the House?

**Mr Sorbara:** I support reporting the bill to the House. I just point out that yesterday, before that amendment, none of you submitted your answers. Your answers are late, by the way, as to whether or not that was a trick amendment. There is a lot riding on that, so you can submit your answers to my office. You have four more days to do so. A lot is riding on it. It might have been a trick amendment.

I want to say one final thing just as we report the bill. If there is anything the ministry can do in moving the implementation time of this bill, it is something our party would be anxious and willing to support. I realize the bill does not come into force until a date to be proclaimed by the cabinet. The cabinet has absolute discretion as to when it proposes to do that. It could be never, in fact, or it could be as soon as the day after we pass it. I would encourage that. I see the Attorney General here with his parliamentary assistant and the whole crew from the new building on Bay Street. I would encourage them to get on with implementation even though they are not accepting the recommendation that we would have had on the bill. I wish them good luck with it.

**Mr Carr:** I just wanted to add my thanks to the members of the committee. When we started here, people told me that you become a lot friendlier with people on the other side as a result of this committee. I think it is true and I think that is good. We have just got to make it so we can get on committees and get around to meet everybody.

I, of course, am disappointed that some of our amendments did not go through, so hopefully in the House we will have a chance to bring some of the more substantial ones forward and see if there is any movement. We saw a little bit of wavering on some of them there and we saw one foot in and one foot out. At the end, hopefully, some of our discussions got through to the Attorney General. So we saw a little bit of movement, but in the end unfortunately the substantial amendments that we had hoped to bring forward did not go through. So we will try again with that and I hope everybody realizes that they were brought in the spirit of trying to make things better and we will look forward to a long summer with you all as we get on to other things.

**Mrs Mathysen:** We on the government side would like to thank all members here for bringing wisdom and diligence to the review of this bill. We hope that the Solicitor General will take it back now to the ministry and that our efforts to provide support for the families of Ontario where it is needed will indeed be our contribution.

**Ms S. Murdock:** I would like to say one thing—

**The Chair:** With Mr Sorbara's indulgence.

**Ms S. Murdock:** Mr Wessinger and I were visitors to this committee and it has been a real learning experience for me.

**Mr Harnick:** You mean you are not going to be here full-time?

**Ms S. Murdock:** No. I am on resources development, actually. But I am glad this has been the learning ground through which I am going because I have a feeling I am probably going to be using this experience extensively. I know that Mr Sorbara and I have had altercations at times throughout this committee, but I do have to say to him that it has been an actual pleasure at times watching you and listening to you and your articulation, your presentation of arguments. In actual fact, I hope that I can be as articulate as you.

And I really appreciate the support that Mr Carr and Mr Harnick have given during this committee. Dianne Cunningham too has been very committed to certain aspects of this bill and it has been a tremendous experience for all of us and I thank you for it.

**Mr Sorbara:** It seems to me that with what I have seen, we are going to hear a final word from the parliamentary assistant to the Attorney General. I look forward to that. And these are really my final remarks. There are three categories of people that I also wanted to commend and these are very serious sentiments as well.

The parliamentary assistant has done a very commendable job of carrying this bill. I have had parliamentary assistants carry bills for me and I have not seen it done any better by them. It is a difficult job and you are, particularly given your newness to the Legislature, responsible for pretending that you understand every single thing about a piece of legislation on a very quick basis. I know you do not understand every single thing and we all accept that. I understand perhaps only a little bit more than you and only because I had five and a half years to learn a little something and your learning curve is probably as great as that of any of us.

To legislative counsel, thank you for bearing with us, at least bearing up with me. The others can speak for themselves. I do not think Don Revell, when he joined us for committee consideration, expected that he would be here for a couple of months, but that is the breaks and that is what happens in government. He has served us very well, and any criticisms that we have had of the bill have been in the main based on our own frail understanding of the structure of legislation rather than any defect in the crafting of it.

And, of course, to our clerk who puts up with us with the best of humour and consults on all matters, including the success of our ball team this year. I want to say thank you to her and to you who have done an absolutely admirable job of trying to curtail me from exercising my right to freedom of speech. Congratulations to you. You are going to continue to thrive in your career as a parliamentarian until about four years from now when you will end your parliamentary career, like the rest of your colleagues. So thank you all and best wishes until the next time we come together to consider a bill. If you think this took a long time, wait until we get to Sunday shopping.

**Mr Wessenger:** I would just like to thank everybody for the assistance they have given me and the contribution they have given with respect to this bill. In particular, I would like to thank, of course, ministry staff and the clerk and legislative counsel because they have been very co-operative in assisting me on some of the changes we have had to do with the legislation.

I would also like to thank members of the opposition because I think they have contributed to this process. They have made suggestions that have been included in the legislation. They have pointed out items that needed clarification. I am very pleased to see how this process works. It does have its political partisanship, but that is to be expected. But it has been fun. I must say I have enjoyed the

experience working with people here and I am looking forward, actually, to coming back again and taking some more legislation through this committee. So thank you to everybody.

Bill, as amended, ordered to be reported.

Le projet de loi, modifié, est déféré au comité plénier de la Chambre.

**The Chair:** The subcommittee shall be meeting at approximately 3:15, after question period, in the opposition library tomorrow afternoon. We are now adjourned to the call of the Chair. Thank you.

The committee adjourned at 1652.



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## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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Fletcher, Derek (Guelph NDP)  
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Mills, Gordon (Durham East NDP)  
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Sorbara, Gregory S. (York Centre L)  
Wilson, Fred (Frontenac-Addington NDP)  
Winninger, David (London South NDP)

**Substitutions:**

Murdock, Sharon (Sudbury NDP) for Mr F. Wilson  
Wessenger, Paul (Simcoe Centre NDP) for Mr Winninger

**Clerk:** Freedman, Lisa

**Staff:** Revell, Donald, Legislative Counsel



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Première session, 35<sup>e</sup> législature

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Clerk: Lisa Freedman

Président : Drummond White  
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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday 22 April 1991

The committee met at 1602 in room 228.

### ORGANIZATION

**The Chair:** I call the meeting to order. All pieces of business today relate to the organization of the committee. The first piece of business is the report of the subcommittee.

Your subcommittee met on Wednesday 17 April 1991 to discuss the committee's scheduling and agreed to the following schedule:

Monday 22 April, organization; Tuesday 23 April, conflict-of-interest discussion; Monday 29 April, witnesses, conflict of interest; Tuesday 30 April, witnesses, conflict of interest; Monday 6 May, public hearings, Bills 7 and 8; Tuesday 7 May, public hearings, Bills 7 and 8.

It was further agreed that the committee will advertise throughout the province of Ontario once in each daily newspaper with respect to public hearings on Bills 7 and 8.

**Mrs Mathysen:** In regard to the report of the subcommittee, I move that this committee agree to the following witnesses: Mr Perruzza, Mr Allen, Mr Philip, Ms Ziembra.

The list includes Ms Akande and we suggest that we substitute either Mr Pouliot or Mr Charlton, since there is an ongoing investigation regarding Ms Akande, and that further we have on our list Mr Mammoliti, Mr Kormos, Mr Wessenger, Judge Evans.

Now it says, "Someone from the Premier's office." Should it not be Premier Rae himself? All right?

And that on 23 April, we give instructions to the legislative research assistant to draft a report and that we consider that draft report on 29 April 1991 and that we finalize the report after hearings on 30 April 1991.

**Mr Harnick:** Just as clarification, why are we first of all writing a report on the 23rd when we are hearing the witnesses on the 29th and 30th? I have no idea why, unless I missed what you were saying. A report written on the 23rd makes no sense.

**The Chair:** Mr Morrow?

**Mr Morrow:** If you will allow me to, Mr Chair, I can basically clear that up. We are looking to have a rough draft report done before the witnesses come in, and what the witnesses will do is give us a final draft report. Now why we are doing this is obviously for time restraints only, so we can also move on with other government business.

**Mr Harnick:** That was in response to what I was saying. I was not finished and I will have something to say about the way the Chair tends to ride roughshod over people here who want to speak, and that will be part of my remarks. I cannot understand it and I am not going to sit here if we are going to meet for an hour today and two hours tomorrow and write a report before we have heard

the witnesses. That is, without any doubt, the stupidest thing I have ever heard. What is the point—

**Mr Morrow:** Mr Chair—

**Mr Harnick:** May I finish?

**Mr Morrow:** I am sorry. I did not realize you were not done.

**Mr Harnick:** Quite frankly, the idea of writing a report before the witnesses are heard and after you have had maybe one hour to consider these guidelines is obscene. If that is the case, I think we may as well all pack our bags because this committee is quite simply a farce. So you will not get my support about that. If you want to make this a farce, we can write the report right now and let's not waste any more time or money. Mr Sorbara and I can leave and you people can write your report and that will be the end of it.

**Mr Morrow:** Mr Chair—

**Mr Harnick:** Just a second. That is the first thing. The second thing is that if we are going to hear witnesses, I personally would like to see as many witnesses as possible, but I do not want to bring witnesses here if the conditions are such that we do not get to examine them exhaustively. If we are going to be interrupted by the Chair in the middle of a line of examination that we are not permitted to complete and we are going to be able to ask one or two questions to each of the individuals who come here, who give long-winded answers and do not permit us to develop a proper examination of them, then let's not bother. The first time we had witnesses come to this committee, that is exactly what happened. It was, "You have 30 seconds," and ask your question and get your answer and then the Chair cut you off. That is a farce too.

**Mr Winninger:** It is nothing like a judge cutting you off in the courtroom.

**Mr Harnick:** A judge may well cut you off in the courtroom if the questions you are asking are irrelevant, but he is certainly going to let you carry on as long as you want to carry on. Mr Winninger knows that. You are not precluded from completing your examination.

This idea that we are going to stack this place with witnesses, but not get enough time to examine them thoroughly and that we are going to be writing a report that ultimately will be tabled in the Legislature before we have even finished our second day of deliberations on this topic makes this whole exercise a farce. It is totally contrary to what we talked about at the subcommittee, where we did not talk about a report other than saying that at the conclusion of the hearings, a report would be written.

I am not going to sit here and let this group come and change what we decided upon at the subcommittee level and expect us to vote on it, because that was not part of those deliberations. This idea of a report was completely



absent from our discussions, other than the fact that the report would be written after the hearings. I am not in favour of that and I am not sticking around here if that is the way you are going to run this place, because it is a farce if it is.

Furthermore, we were to be given the opportunity to review a list of the witnesses proposed, and I certainly want enough time to be able to examine those witnesses.

**Mr Sorbara:** I must begin by saying I am very sympathetic to Charles's view on the business of writing the report before we have heard all the witnesses. I am not sure if there are any lawyers sitting in the government caucus here.

**Mr Harnick:** Right here.

**Mr Sorbara:** You are a lawyer. I think you would know that—

**Mr Winninger:** It does not make any difference, Greg.

**Mr Harnick:** Come on, David. Not in our party. I mean the judge always writes the judgement before he hears the evidence.

Interjections.

**Mr Sorbara:** Right. Well, I guess the best thing I can say is I am not a member of that party.

**Mr Morrow:** That is the worst thing you can say.

**Mr Winninger:** That is the best thing you can say.

1610

**Mr Sorbara:** I am glad to hear that the government has agreed to almost all the witnesses who have been proposed. If I might, Mr Chairman, because I was not able to write down what the whip said, my understanding is then, if I can go down my list: Kormos, Judge Evans, Elaine Ziemba, George Mammoliti, Anthony Perruzza, Ed Philip, Richard Allen, Paul Wessinger and the person in the Premier's office responsible for the administration of the guidelines.

**Mr Morrow:** It will be the Premier himself, Mr Rae.

**Mr Sorbara:** Oh, so Mr Rae is to come back as well. Okay.

**The Chair:** Mr Sorbara, are you finished?

**Mr Sorbara:** No, I am not finished.

The reason I think it would be foolish in this instance to even consider writing the report or drafting a draft report like tomorrow and finalizing it the day after the witnesses have finished the hearing is that we are going to hear a lot of stuff that is going to help us in considering what the guidelines should say.

But more important than that, if you turn to this document that Susan Swift, our research assistant, has prepared, you will notice that towards the back, in fact on page 21, there is a list of issues and concerns that arose as a result of the witnesses that we heard so far. We have not even begun to discuss yet which of those we would want to deal with in our report.

Even more pertinent, I think, if you could follow along with me, is a list of matters that the Premier himself asked us to consider in dealing with the guidelines. That appears

after the title page, after page 22 of this document. Just to refresh your memory, it is a document that the Premier handed out when he was here and on it he lists issues from A to K that need to be considered. Either I have missed something or my impression is that we have not even started to discuss as a committee where we stand on all these issues. I think they are important issues and I think they are worthy of discussion.

The final point is that when the Premier was here, he made it pretty clear that he wanted this committee to have the luxury of spending some time and mulling over these things. He was not going to press us for an early response on his guidelines. Indeed, he invited us to consider the advisability of recommending whether the guidelines should go into legislation. That is a pretty big assignment.

Now admittedly, we did take a very long time considering Bill 17, and I have to take responsibility for that. But I do not think it would hurt if we heard the witnesses that we want to hear coming up on the dates that are proposed in the motion, and then after that begin our discussions on these items that the Premier wants us to discuss as well as the ones that our research assistant has prepared for our consideration.

If we do anything else, it is as Charles said: It is going to be kind of ridiculous to hear the witnesses but already be in a position to sign a report. I think it is going to be difficult enough for this committee to submit a unanimous report on things as sensitive as conflict-of-interest guidelines. There is no possibility at all of doing that if the position that the government takes is that we will start writing the report before we have heard all of the witnesses.

So I plead with you, in a friendly motion, to strike that part of the motion and just proceed with the witnesses without putting a time constraint on how long we will have to submit the guidelines.

Now having said that, I would be interested in hearing your views as to when you want to submit a report. I think 29 or 30 April is certainly unacceptable. I for one have not even begun to consider the implication of the questions the Premier raised in his own submission and in the document he left with us. Nor have I had any time to think about and review and consider the issues that have been raised by our research assistant.

So again, I propose that we hear the witnesses and then spend a day or two having the necessary debates that go on in this committee and then get down to writing a report. I do not think the opposition is going to fall or, heaven help us, the government is going to fall if we do that.

**Mr Morrow:** I would like to speak to the government motion for a moment if I can. Mr Harnick, you raised some very good points actually. The reason we would like the draft report done this week is so we can move on to some of your private members' bills, such as Norm Sterling's 7 and 8. We would also like to move on to your party's 123 if we can, as soon as possible, because we do feel victims' rights are important.

You did not see the list of witnesses. Well, Mr Harnick, we just received that list this morning, I do believe. Right, Mr Sorbara?

**Mr Sorbara:** I will begin, Mr Chairman, with apologies.

**Mr Morrow:** Excuse me. I still have the floor.

**Mr Sorbara:** You do indeed.

**Mr Morrow:** We would like to move as quickly as we can on this draft report to get it moving so the function of this committee is not drawn down into what we went through with Bill 17. I will be supporting the government motion just for that aspect. We are hearing witnesses next week to help us, we hope, with a final draft so we can get that moving.

I see you shaking your head, Mr Harnick.

**Mr Harnick:** Because it is—may I?

**The Chair:** Do not continually refer to Mr Harnick and Mr Sorbara while you still have the floor.

**Mr Morrow:** I still have the floor.

**The Chair:** It is only encouraging a free-for-all.

**Mr Morrow:** Excuse me, Mr Chair. I have the floor. Do you mind?

**The Chair:** You do, sir, as long as you maintain it without reference to the opposition members.

**Mr Morrow:** We basically are allowing you to have your grandstanding with the witnesses that we have coming up.

**Mr Sorbara:** No. Okay. I think I have the floor now.

**The Chair:** No, you don't. Charles does.

**Mr Sorbara:** Seniority. Go ahead.

**Mr Harnick:** No, it is okay.

**Mr Morrow:** I am now finished. Thank you very much.

**Mr Sorbara:** I am going to begin with an apology to the member for Willowdale that the list of witnesses, which I undertook to prepare and deliver, did not get to him sooner.

**Mr Harnick:** That is okay.

**Mr Sorbara:** I take full responsibility for that. I am glad the government is accepting this list of witnesses.

The second point to make is that we cannot do anything about the fact that the government may close ranks and require that a report be written and approved in final form by the 30th, although I want to tell you, Mark, and the other members, that you will pay for it if you do that. Ramming things through ultimately comes back to haunt you. We are going to have to submit probably a dissenting report, and that will be too bad. What is worse is that I think our research officer is going to say that she has not got any sense at all of what the committee wants to report and we are going to be left out of that exercise.

But the other thing I wanted to say to you in all sincerity is that you control the agenda and I certainly am willing to abide by the agenda that you set. If you want to deal with government legislation after we hear from witnesses, that is fine. If you want to deal with the natural death bills, that is fine. You can put in a time allocation procedure here and require that we do it within a certain amount of time. What I am telling you is, it is probably a better course to go to allow us some more time to deal with these guidelines. Nothing turns on it. The Premier has already said he

is going to be living by these guidelines. He has made that point clear. So there is nothing urgent that requires us to get them out of committee by 30 April. Although you have the ability and the numbers to force it out of committee by 30 April, I am telling you that you are going to pay for that. I just think it is absolutely inappropriate.

1620

I am ready, willing and able to proceed with the public hearings and speedy consideration of Bills 7 and 8. I want to say as well that I do not care very much about the 123 motions. We have one on the table and I would be willing, if there is a time constraint, to withdraw it to provide time for government bills. I do not know what the Tories think about that, but they may be willing to do the same thing. In any event, government bills take precedence over motions under standing order 123. Remember that. Government bills take precedence over standing order 123 hearings.

Mark, I want to tell you that you cannot rely on the desire or the need to do 123 motions. We do not have any other bills right now that are referred to this committee other than one private member's bill represented by Bills 7 and 8, combined for these purposes with the permission of the House. So, I urge you once again not to ram through consideration of these conflict-of-interest guidelines. Your government is already under enough pressure with an investigation going on in respect of the conduct of the Minister of Community and Social Services. You have already lost one member: a minister had to resign on Thursday for what appeared to be an inadvertent mistake.

Under those circumstances and under that cloud, to be seen to be pushing through the conflict-of-interest guidelines and to get them out of this committee will not stand you in good stead. So I plead with you once again, and I am not going to talk any more, that we hear the witnesses and allow ourselves one or two or three days of discussion in this committee to discuss the issues raised by our research officer and the issues raised by the Premier himself.

**The Chair:** Thank you, Mr Sorbara. The clerk points out something that is significant in regard to the timing, and that is very simply that, according to the schedule from the subcommittee, we are to be meeting on 29 April which, as we know, is not going to be occurring.

**Mr Sorbara:** We cannot do that. We have to move everything up by one day.

**The Chair:** The consideration of the budget basically means we will have at least one extra week to consider the clerk's report. Mr Harnick.

**Mr Harnick:** That being the case, I certainly have no objection to moving everything one week further back. But what I put to the government members on this committee is quite simply this: If you wish to go to the Premier, who has indicated that he takes this very seriously and wants this properly reviewed and wants a good report, I would be quite content to start writing the report tomorrow if the Premier were to come in here and tell us he would be quite content that we start to do so before we start to deliberate and before we hear the witnesses.

If the Premier came in here and said that he was prepared that we write the report before any deliberations



took place and before we heard the witnesses, then I would be quite content if we went ahead and did it. I would be shocked. I would not believe that he would be prepared for anyone on this committee to proceed in that manner, but if that is the case, I think we should put it to him and we should see if that is the way he wants this important piece of potential legislation dealt with. I would be shocked if he were prepared to have the report issued before the work was done.

**Mr Sorbara:** No, he would not do that. Do not be silly.

**Mr Harnick:** Certainly. Mr Sorbara states that the Premier would never do that and I should not be silly. I merely convey that the government members on this committee should not be silly either. Certainly if they wish to proceed in this way, I would like them to go and tell the Premier how his guidelines are being dealt with at the level of this committee.

The other aspect to this that I find absolutely reprehensible is the fact that we had a subcommittee meeting and the subcommittee meeting was chaired by the Vice-Chairman. At that meeting, there was no mention of what the government motion would be. What is the purpose of having a subcommittee meeting where each party has a representative who discusses the way the various bills and guidelines are going to be dealt with if we have a meeting and then come to the next committee meeting and find out that we are dealing with matters in a different way than what the subcommittee considered?

If I am going to be involved in this process at the subcommittee, then the work we do here and the motions that are tabled here should reflect what happened in that subcommittee meeting. There was no mention of proceeding in the manner set out in Mrs Mathysen's motion, and if that is the way this committee wants to do its work, then there is no purpose in my being here and participating, because it truly is a farce.

I am shocked that anybody on this committee would even dare suggest proceeding in the way this motion reads, for the simple reason that the Premier himself has indicated how important these guidelines are to him. To do this in a manner that makes a mockery of those guidelines and a mockery of this process is not reflective of what he told us here or what he told us in the House last week when your party and your ministers experienced some difficulties.

The other matter I wish to point out is that we have nine witnesses on the list. We have two days set aside to examine those nine witnesses. That would mean we would be doing about three witnesses an hour, and that certainly is not a very long time for 12 people to engage in a thorough examination of the witnesses who come before this committee. I would suggest that, if we are going to make this process meaningful, we consider adding a certain amount of time so we can do our work properly.

But I am opposed to the government motion for two reasons: First, it does not reflect what the subcommittee discussed, and I find that devious and I question the motives of the government members of this committee in drafting the motion that way. Second, it makes a mockery

of what your own Premier is stating is very important to him. I will be voting against this motion, and if you are going to write the report before the hearings take place, I am not going to take any part in it.

**Mrs Mathysen:** I would like to point out to the members opposite that we have shown a great deal of latitude and deference in this committee and that we have been patient, but we have come to a point in time when we have work to do and we would like to get on with it.

Last February we heard from a number of witnesses. We had extensive information from those witnesses. We have had two months to consider what we heard in those meetings and from those witnesses. If Mr Harnick is concerned about the amount of time to listen to further witnesses, I would say we can reduce the number of witnesses if he does not feel comfortable. We are talking to nine in two days. We can reduce that number.

I would also like to say that the draft report will not be in its completed form and we will be able to make changes and refinements to that report as we hear from the next group of witnesses. But our committee has a job to do and, as I said before, we have had two months to consider what we heard last February. It is time to get on with it.

Very simply, Mr Chairman, this is ample time. We, on the government side, feel that we have been very generous, very fair and we want to get this back to the House. The time has come when we need concrete conflict-of-interest guidelines and we need them right now.

**Mr Fletcher:** Well spoken.

1630

**Mr Sorbara:** Can I just ask out loud whether either the whip or the Vice-Chairman is prepared to answer a couple of questions before I propose some sort of amendment to get us out of this difficult bind?

First of all, in view of the fact that the budget is going to be read on Monday 29 April, how do you propose to deal with that? We are not going to hear witnesses on Monday; we are going to be in the House listening to the budget. Will those witnesses be heard following the hearings on 6 and 7 May?

**Mr Morrow:** I would assume, Greg, that everything is being put back one day. Instead of going to the 29th and 30th, we are now moving the 30th over to the 6th. So basically we are giving you one more week.

**Mr Sorbara:** Are you willing to make the compromise that we hear witnesses in respect of conflict of interest on the 30th and on the 6th and the 7th?

**Interjection:** You cannot do that.

**Mr Morrow:** I did not hear you, Greg. I am sorry. Go ahead.

**Mr Sorbara:** Are you prepared perhaps to make a compromise so that we will have three days of witnesses on conflict of interest, on the understanding that on the third day we may not have witnesses all day but have some sort of chance to discuss the report that will have been written by then? So we will have three days of hearings and consideration of conflicts and then move the hearings

on Bill 7 and Bill 8 to the Monday and Tuesday following the 6th and 7th. That would be the 13th and 14th.

**Mr Morrow:** I would agree to have the witnesses on the two days and on the third day have no witnesses, but we can talk about the final draft of the report.

**Mr Sorbara:** Okay, so you want to free up the final day, the 7th, for a final discussion on—

**Mr Morrow:** On the final draft.

**Mr Sorbara:** That would be better than nothing. You folks have the majority. Let me just say that, for people who put the name "democratic" in the title of their party, I am honestly shocked.

**Mrs Mathysen:** Democratic, but not foolhardy.

**Mr Sorbara:** Irene Mathysen says, "Democratic, but not foolhardy," and all the staff to the ministers are laughing, but the fact is that this is a closure motion. I just want you to understand. This is a time allocation motion on perhaps the most sensitive and difficult issues that we are going to consider.

That is your choice, but let me put it this way. Some of you might remember David Peterson. David Peterson had a good test as to whether or not what you are proposing to do looked like a good idea or not. The test was simple. He used to say: "Just ask yourself how it would look on the front page of the Globe and Mail. If you think you can pass that test, then go ahead and do it. There is probably not too much political risk."

I say to my friends in the New Democratic Party to ask themselves, Gord, how it is going to look on the front page of the Globe and Mail. Maybe it will not get there, but you have to use that as the test. How is it going to look to hear that the committee today voted to write its report on conflict of interest before it heard from key witnesses and that it used closure to end any further committee discussion of conflict of interest? I am going to tell you that is what the press release is going to look like, so you should go back. You have got these orders—

**Mr Fletcher:** Who reads the paper?

**Mr Sorbara:** Just shut up for a second, Derek, would you?

**Mr Winninger:** What matters, the public or the papers? Come on.

**Mr Sorbara:** I want to tell you, David, that there are times when you want to bring in closure. Order, Mr Chairman, I have the floor.

**The Chair:** You both have the floor and Mr Fletcher and you are engaging in a discussion.

**Mr Sorbara:** And I am talking about organization and that is the subject of today's discussion.

**The Chair:** Please.

**Mr Sorbara:** There are times when you have to bring in time allocation or closure, but do you realize that you have just done that on Bill 4, a bill that is retroactive, so it comes into force no matter when you pass it; you have just done it on conflict of interest by way of the motion before this committee? The difficulty that you are going to be confronting is that you are going to get in the habit, every

time the government gets in a little bit of trouble, of bringing in closure, and the people are going to find out about that.

You cannot hide things around here. It is like Zanana not resigning her directorship; the people find out about it. And it is like the Premier sending out a memo amending the conflict-of-interest guidelines, not to the press but to ministers, parliamentary assistants and caucus; the people find out about it. When it comes open for public discussion, what happens? You put in a time allocation motion. It would not hurt if we had another week or two to discuss this issue. It would not hurt if we had an opportunity to reflect on the guidelines in this committee after having heard from Perruzza, who still has not divested, and after we had heard from Mammoliti, who still has not divested. It would be appropriate that we have an opportunity to discuss the issue.

You are going to have to go back to your voters and justify what you do. Gord, you have to go back to your voters and justify what you do in respect of the oath to the Queen. You know that; I know that. You have to justify what you do. All of you are newly elected members and you cannot continue to operate as you did in your private lives. When things get tough you ram them through. You cannot continue to do that, and these are terrible precedents.

There is a closure motion being discussed in the House right now and here today there is another closure motion on the table. Charles is right. It is absolutely offensive that you did not give us notice of this, that you did not tell us at the subcommittee meeting that you would be bringing in a closure motion and that we find out about it here and now without any opportunity to take it to our caucuses, without any opportunity to discuss it with our staff members and without any sense of what the implications of that are for how we are going to conduct our business in this committee. You are setting a terrible precedent and you are poisoning the atmosphere of this committee. You really are, I think, doing a disservice to the good world that we could establish here. But you have got the numbers, and I have said it all.

I hope that you will give us another day with witnesses. I hope you will move the thing—I am not even going to move the motion, though. I will leave that up to you. The fact that without notice you have brought closure to this committee on these matters without one day of discussion of the substance among the members of this committee means that you have absolutely no respect for what we might add to the deliberations on conflict-of-interest guidelines, and I am really disappointed.

**Mr Morrow:** First of all, I do not consider this a closure motion because we are giving you ample time. We have asked—

**Mr Sorbara:** I am sorry, It is a closure motion. Any motion that limits the time for debate is a closure motion.

**The Chair:** Mr Sorbara, Mr Morrow has the floor.

**Mr Morrow:** We are giving you two weeks, actually a bit longer than two weeks. We are giving you two days of hearings—



**Mr Harnick:** Two weeks, with the report written before the hearings. If that is not closure, I do not know what is.

**The Chair:** Mr Morrow has the floor.

**Mr Morrow:** We have asked for a rough draft beforehand, so we can give you ample time to go over a final draft—I would gather as much time as is needed to make a good final draft. That is basically what we are saying. We are giving you a lot of time. We are giving you two days to grandstand with witnesses that you want to grandstand with.

**Mr Sorbara:** I reject that allegation of grandstanding when we are considering guidelines that the Premier asked us to consider. He did not ask just the New Democratic Party members to consider them. When they consider it grandstanding, we do not have any more time for the committee.

**Mr Harnick:** If the only reason we are here is to bring a motion—

**Mr Sorbara:** Pass whatever motion you want. Okay? Handle it however you want.

**Mr Morrow:** That is all I have to say, Mr Chair.

**Mrs Mathysen:** You pulled this stunt another day. You have to find a new tack.

**The Chair:** I would suggest that we recess for a few moments and then go on to a discussion of the budget.

**Mr Morrow:** We have a quorum.

**The Chair:** I would suggest we recess for a few moments to calm down. Thank you.

The committee recessed at 1640.

1651

**The Chair:** We are resuming discussion of the sub-committee report. Mr Winninger was next.

**Mr Winninger:** We certainly heard the member for York Centre drone on at some length today about how this committee is invoking closure. Certainly a motion to schedule attendance of witnesses and deliberation and discussion cannot be tortured into a motion for closure. I think Mr Sorbara is completely misrepresenting the intent of this particular motion, which is simply to acknowledge that the conflict-of-interest guidelines have been before this committee for two months now, witnesses have been heard and, as my esteemed colleague Mrs Mathysen pointed out, witnesses can be heard again. The draft report can be initiated. The draft report can always be amended to reflect issues arising out of the witnesses who appear in early May.

There is a lot of grandstanding going on here today. I think that ultimately the public of Ontario have a right to have these guidelines put in place so that their members of the Legislature can not only be free of such conflicts but also be seen to be free of such conflicts of interest, and this has to be done soon.

Certainly the members of the government perhaps have the most to lose by way of these conflict-of-interest guidelines, being called upon to divest themselves of a lot of significant assets. Yet it is the government members of this

committee and members of the government who are prepared to do that so that when decisions are made, they are not made in the face of personal conflict. So this is an issue that has to be brought to a head.

I think it is very unfortunate that the members of the opposition on this committee should choose to walk out and ignore such an important decision before this committee. I think that ultimately they will be judged by the people of Ontario.

Certainly they may not be too pleased with the idea that they will be constrained by conflict-of-interest guidelines, that perhaps these conflict-of-interest guidelines will become entrenched in the law. Perhaps they have some fear that they have the remote expectation that they might once again form the government of Ontario and by that time they will be constrained by these guidelines as well. Certainly this is no reason to boycott the committee. The government members have been demonstrating a great deal of patience in the face of some rather inappropriate comments, that this government is farcical, that this government is silly. What could be more juvenile than to level these kinds of allegations against the government members, who are only doing their job very responsibly on this committee?

**Mr Mills:** I would just like to speak to these proceedings here. I feel very disappointed that the members of the opposition and the third party chose to walk out on this meeting. I think that by doing so they chose not to debate the issues rationally, fairly and in a congenial manner.

I think that to debate this bill and the conflict of interest one certainly has to be of a congenial nature and not get carried away as to how this bill may or may not affect you or your government down the road. That seems to be one of the big issues here. There seems to be some sort of general reluctance to talk and be reasonable on anything, based upon the rationale that this, once into law, would be very difficult for these people to handle down the road.

I would just like to make reference to the statement of Mr Sorbara when he said we are preventing key witnesses from appearing before this committee. I would like to read into the record the key witnesses we have listened to who are going to make part of the primary report before we get around to the final one.

We had Murray Elston, an MPP with a wealth of information about conflict of interest as a previous member of the cabinet in different portfolios, and the information he gave was of great help to this committee.

Perhaps the most important person of all, we had the Honourable Gregory Evans, who is the Conflict of Interest Commissioner, and his input certainly goes a long way to help us compile our preliminary report.

We had Doug Ewart, Professor Ian Greene, the Honourable Howard Hampton and Mary Hogan. We had Monte Kwinter, who was a previous cabinet minister in the Liberal government, who was able to give us a wealth of information about how we should make our decisions.

We had the Honourable Frances Lankin, who was grilled extensively about her role as a member of the Ontario Public Service Employees Union and a negotiator for

the Ontario Public Service Employees Union and how that related to her present cabinet position.

We had the Treasurer of Ontario whom we spoke to, the Honourable Floyd Laughren, and his input was certainly most welcome.

We had the Premier of Ontario, the Honourable Bob Rae, who came in and implored our committee to really look and come up with some guidelines that were really meaningful, and I think we had the benefit of his comments to this committee.

We had John Sweeney, who is no longer an MPP but was a cabinet minister in the Liberal administration. He came and I can remember him giving some very interesting guidelines and comments as they related to parliamentary assistants. I can remember Mr Sweeney telling us he had gone through eight parliamentary assistants. I know that all of us who are parliamentary assistants really enjoyed listening to Mr Sweeney and taking note of his contribution.

Then finally, of the witnesses, we listened to the Honourable Bud Wildman, the Minister of Natural Resources.

So for Mr Sorbara to say that we are waiting now for the key witnesses and that this is closure, that we are not going to see key witnesses and are not going to be able to compile a meaningful report, is complete rubbish.

I regret this day that people walk out from a committee. It almost reminds me of some sort of childish behaviour—"If you don't play the game my way, I'm going to take my football and I'm going to go somewhere else." It is regrettable, and I hope that this regrettable behaviour will become known to the public and the opposition members will in the future have to suffer for this.

**Mr Morrow:** First of all, I would just like to say how proud I am of the government members here for realizing how important this is and how important the conflict of interest is, that we are sitting here and we do not have any opposition here. It is very regrettable that no opposition members are here, but that is their choice.

Second, Mr Sorbara talks about our motion being a closure motion. I do not believe the question was ever called, so I do not believe it is a closure motion. It looks like an agenda as far as I am concerned.

Third, Mr Sorbara talked about not getting anything. We are giving Mr Sorbara everything he needs. We are giving Mr Sorbara his witnesses that he asked for. We are also giving Mr Sorbara his time that he wanted plus one day that he asked for here this afternoon. That is all I would have to say, Mr Chairman.

**Mrs Mathysen:** I would like to conclude by concurring with the very salient remarks made by my colleagues Mr Winner, Mr Mills and Mr Morrow. I too regret the opposition leaving. I do not think it serves any useful purpose other than perhaps that we have had a lot more useful discussion. I suppose we should be grateful that they did not throw themselves on the floor and kick their little heels.

1700

I think the bottom line is that we have an obligation to bring in very strict and demanding conflict-of-interest guidelines and I am proud that our government is prepared

to do that. I can only say that those who would oppose that are driven by unprincipled self-interest.

**Mr Morrow:** I would like a friendly amendment to our motion. We will add the extra day to do the final draft of the report. At that final date, the report will be done.

**The Chair:** The clerk has some clarification.

**Clerk of the Committee:** I am not sure. At one point, there seemed to be agreement that there would be witnesses on 30 April and 6 May and report writing on 7 May. Is that what you are clarifying?

**Mr Morrow:** That is what I am trying to clarify with this point.

**The Chair:** That is a friendly amendment, so to speak. Mrs Mathysen, are you then changing your amendment?

**Mrs Mathysen:** Yes, I would change the dates on my amendment. We will not meet on 29 April; we will meet on 30 April, finish hearing witnesses on 6 May and come to the final report on 7 May.

**The Chair:** The amended report of the subcommittee would be the same as before until 30 April, witnesses, conflict of interest. Then Monday 6 May, witnesses, conflict of interest; Tuesday 7 May, final recommendations regarding the conflict of interest; 13 and 14 May, public hearings on Bills 7 and 8.

Is that substantially correct? Does that reflect your changed amendment, Mrs Mathysen?

**Mrs Mathysen:** Yes.

**The Chair:** Are we ready for the vote on that particular issue? All in favour the amended—excuse me. First of all, I guess it would be the amendment to the report and then the report itself. All those in favour of the amendment as proposed by Mrs Mathysen? Opposed? Carried. All those in favour of the report of the subcommittee as amended?

**Mrs Mathysen:** We would like a clarification on the witnesses who will be coming before the committee. We would like to specifically identify the witnesses and clarify that issue.

**The Chair:** Could we vote on the acceptance of the report first? All those in favour of the report as amended? Carried.

**Mrs Mathysen:** We would like to suggest Mr Pouliot instead of Ms Akande.

**The Chair:** Have the names of the witnesses been recorded?

**Clerk of the Committee:** Yes, they have.

**The Chair:** Any other changes?

**Mrs Mathysen:** The Premier.

**The Chair:** The Premier rather than someone from the Premier's office?

**Mrs Mathysen:** Yes.

**The Chair:** Are Mrs Mathysen's suggestions acceptable? They seem to be.

Are these witnesses to be asked for a statement or will they be coming simply to answer questions?



**Mrs Mathysen:** Both.

**The Chair:** Should the time given to these witnesses be an even amount, or should one or the other of those witnesses have a greater portion of time?

**Mrs Mathysen:** I think an even amount would be best.

**The Chair:** So we are looking at an even time scheduling for the clerk's purposes?

**Mrs Mathysen:** Yes.

**Ms Swift:** I just want to mention to the committee members, with respect to giving the instructions tomorrow, I will just refer you to the summary of issues and recommendations that have been passed out. On page 21 is the list of issues and concerns that might focus your discussions for giving me instructions for making recommendations. The committee might want to consider if they want to deal with all those issues that have been identified or if they want to deal with only some of them and perhaps some of them in greater length and some of them in lesser length.

The recommendations that have been set out in the report are those recommendations of witnesses. The committee might want to make different recommendations or combine some of them. Those are things you might want to consider. If the committee wants me to have a draft report by next Monday or Tuesday, I will have to have fairly clear instructions on the recommendations themselves because there are quite a few of them. There may be issues that are not reflected in this report that you may want to bring up. But whatever, this is just a starting point for discussions for tomorrow.

**Mr Morrow:** That is no problem.

**The Chair:** Before we leave, we have also the budget to discuss for the fiscal year 1991-92.

**Mr Morrow:** Mr Chair, I would ask that we move the budget over until when the opposition is here. Would that be fair to everybody?

**The Chair:** I am sure it would be. We are adjourned until 3:30 tomorrow.

The committee adjourned at 1708.

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**Vice-Chair:** Morrow, Mark (Wentworth East NDP)

Carr, Gary (Oakville South PC)

Chiarelli, Robert (Ottawa West L)

Fletcher, Derek (Guelph NDP)

Harnick, Charles (Willowdale PC)

Mathyssen, Irene (Middlesex NDP)

Mills, Gordon (Durham East NDP)

Poirier, Jean (Prescott and Russell L)

Sorbara, Gregory S. (York Centre L)

Wilson, Fred (Frontenac-Addington NDP)

Winninger, David (London South NDP)

**Substitution:** Cooper, Mike (Kitchener-Wilmot NDP) for Mr F. Wilson

**Clerk:** Freedman, Lisa

**Staff:** Swift, Susan, Research Officer, Legislative Research Service







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## Official Report of Debates (Hansard)

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Standing committee on  
administration of justice

Organization

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Organisation



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Clerk: Lisa Freedman

Président : Drummond White  
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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday 23 April 1991

The committee met at 1552 in room 228.

### ORGANIZATION

**The Chair:** I would like to call the meeting to order. We have before us several items, first of all, the approval of the budget, which was left after yesterday's meeting adjourned, and also a tentative agenda for witnesses with regard to conflict of interest, which I believe has been circulated; and some discussion of instructions for the researcher. If we could proceed first with the budget, the copies of the budget were circulated yesterday. If members are in need of additional copies, the clerk has them.

**Mr Sorbara:** You have to introduce this, Mr Chairman. This is your baby, okay?

**The Chair:** I believe the budget is that of the committee, not of the Chair.

**Mr Sorbara:** We can keep this very short if you will answer just a couple of questions, Mr Chairman. The first is, are you and your members satisfied with this budget? The reason I ask you that is because it is you as Chair of the committee who will have to go before the Board of Internal Economy and justify these expenditures. We can make all sorts of eloquent and passionate arguments to spend more or spend less, but I have counted up once again and your party still has a majority on the committee, so just let us know whether this is the budget that you as Chairman and your members as the majority want, and if that is the case we can go ahead and approve it.

**Mr Fletcher:** I am just wondering if this budget comes from the subcommittee, or where did it come from?

**The Chair:** The clerk prepared the budget.

**Mr Fletcher:** A \$142,000 budget?

**Clerk of the Committee:** I just want to explain one thing about the budget. What I have done is I have prepared a base budget with no travel. That is what you have in front of you for the budget. What I have then also given you is a breakdown of what it costs us, per week, to sit at Queen's Park and to travel, per week, in Ontario. At the moment we have nothing referred that should have us sitting at all in the summer, so it is up to the committee to decide: Do we just go to the board with a base budget and if we are travelling this summer go with a supplementary, or do we want to try to predict and guess how many weeks we want to sit in the summer? If so, we will then add on what is required for us to sit in the summer, either at Queen's Park or throughout Ontario.

What you have in front of you is the basic base budget that pretty much every committee uses. Ours is a little bit higher because I have put in advertising, which runs to \$52,000. It is \$13,000 every time we advertise. We have advertised once already, for the private members' bills—the ads should be coming out today and tomorrow—and

we have other things that we will probably be advertising for. That is what the \$52,000 is.

We also have a conflict-of-interest report and three standing order 123 reports that have to be translated and printed. That is why your base budget is extremely high.

**Mr Sorbara:** Just based on what the clerk has told us, I would wonder out loud whether the other committee members are supportive of standing down consideration of the budget until the whip—your whip, rather—has had an opportunity to consult with the chief government whip and the government House leader to determine what we are going to be doing this summer. Some of us would like to know that.

There is apparently Sunday shopping legislation coming up. Mike Farnan or his successor is going to be bringing that bill forward in the House, we understand, within a month. There are two bills that will probably be referred here: the Arbitration Act and the Mortgages Amendment Act. Those can be considered very quickly, I think. There is the insurance bill. Are we going to be considering that? It would be easier to consider what we should be requesting from the Board of Internal Economy if we knew what the government had in mind as far as our workload is concerned.

**Mr Mills:** I kind of echo those sentiments because I believe that the common pause day legislation is going to come before this committee and I am just wondering what form that is going to take. Are we going to go across Ontario to listen to people or are they all going to come here? I think we should get some direction from the House leader or the government whip before we finalize this because I think that might be a major thing to address this summer, the Sunday shopping, be it here or elsewhere.

**Mr Morrow:** Greg, listen to this: I am going to agree with you on this, that I think the whip should take it to the House leader.

**Mr Sorbara:** Now I am going to change my mind. I cannot take the shock.

**Mr Morrow:** That is it, Mr Chairman.

**Mr Sorbara:** Can we look forward to a report, at least a tentative report, from the whip? I know the government House leader has had communication with the House leader for the opposition about so-called "must have" bills, and bills that must have second reading by the end of June and bills that you think you are going to be able to introduce and get to a committee. So let's have that information filter down, trickle down to us on the committee so that we can make a better determination of what we should be asking of the Board of Internal Economy.

**Mrs Mathysen:** I would be happy to do that. I would be happy to go to the House leader and find out if she has been able to get some co-operation from the other House



leaders so that we can proceed and find out what we will be doing this summer.

**Mrs Haslam:** On a point of order, Mr. Chairman: This is the first time I have served on this committee. Just so I know, do you recognize the speaker or is it fairly open? I am used to serving on the standing committee on government agencies, where you recognize my hand and then I talk. Is that the way this committee is or is this kind of a little more open?

**The Chair:** I think your point of order is very well taken, Mrs Haslam. Thank you.

**Mr Sorbara:** Saving in all cases, Mr Chairman, that Mrs Mathysen is not the Solicitor General by the time we meet next.

**Mrs Haslam:** See what I mean?

**The Chair:** Could we move to a motion. The clerk informs me, Mr Sorbara, that not approving the next fiscal year's budget does not cause any immediate pressing problems. Therefore we do not need it within the next week or two. Could we entertain a motion to stand this down.

**Mr Sorbara:** I will move that this be stood down and that—

**Mr Poirier:** A short request before that, Mr Chair, please. I saw something and the clerk may help me with this. As for the advertising, you wanted to go through all the dailies of Ontario, is that not correct? I think there are something like 91 dailies in Ontario, of which only one of them is the French-language one in Ottawa. Now I presume if you want to reach all the dailies it is because you want to cover Ontario well. How do you plan to cover Ontario well for the francophones to know about this committee's work?

**Clerk of the Committee:** Generally when we talk about advertising throughout Ontario, you are absolutely correct. It is in every daily, which includes only one French paper. If the committee chooses, it can give me instructions to put it in every weekly French paper. It is totally up to the committee.

**Mr Poirier:** Right. There would be about seven or eight French-language weeklies across Ontario, and of course if you only leave it to the dailies, only the people around Le Droit in Ottawa would get it, which means the francophones elsewhere would not get it whatsoever. Could I request the committee's indulgence to consider that, so as to give a similar coverage across all of Ontario for francophones and anglophones?

1600

**The Chair:** Mr Poirier, your concern is in regard to consideration of the expense or of the publication?

**Mr Poirier:** Well, how we are going to have the methodology to advertise what we want to advertise, wherever we want to do it. I want to make sure that anglophones and francophones across Ontario can have a chance to do it. This may add to the cost, obviously, of the publications, but if you do not do it this way then only the francophones around Ottawa will get the same information that anglophones will get across Ontario through their 90 dailies.

**The Chair:** The clerk informs me that as long as the committee instructs her to do so, she can. Is it the wish of the committee?

**Mr Poirier:** Do you require a motion out of it in that case?

**The Chair:** Please.

**Mr Poirier:** In that case, could I ask that the committee consider adding to the advertising budget so that consideration can also be taken, along with the 91 dailies, to cover the bilingual and French-language weeklies across Ontario.

**Mr Mills:** I would just like to know roughly from the clerk what is the cost involved here, approximately. Any idea?

**Clerk of the Committee:** I could look into the cost. The only other cost I know is when one committee did the human rights and they decided to go in every ethnic paper, which included about 500 papers at that point. That cost about \$50,000. Now, adding five papers I do not think is going to cost us more than a few thousand dollars. They are weekly papers and the advertising costs in them are not great. I would estimate about \$2,000 more per ad.

**Mr Mills:** The reason I brought that up is that I sat in on one committee and the cost was a big issue. That is why I just wanted to make sure I was not voting for something that is going to put tremendous costs on it and then you have to appear and justify this, etc.

**Mr Poirier:** From my knowledge of the number of French and bilingual weeklies across Ontario, I would estimate that the cost would be between \$5,000 and \$10,000 at the very most. I do not have a complete list in front of me and I do not have a list of the complete, up-to-date costs, but I think that would be the ballpark figure.

**The Chair:** The clerk informs me that she could bring the exact cost before the committee before the budget is finalized. Further discussion on Mr Poirier's motion?

**Mrs Haslam:** Could I have the motion repeated, please?

**Mr Poirier:** I move that the committee also consider advertising in the French-language and bilingual weeklies of Ontario on top of the 91 dailies as was proposed to be done for advertising so that anglophones and francophones across Ontario have a fair chance of getting the news of this fine committee.

Motion agreed to.

**The Chair:** We then have a motion to stand down the budget.

**Mr Mills:** So moved.

**The Chair:** Further discussion? All in favour?

**Mr Sorbara:** Hold on a second. Actually, you should wait—

**The Chair:** We were in the midst of a vote.

**Mr Sorbara:** No, no. When you say "Any discussion?" you should pause for three seconds and then look around, rather than say: "Any discussion? All in favour?"

**The Chair:** Thank you.

**Mr Sorbara:** Well, I am making a recommendation.

**The Chair:** Any further discussion?

**Mr Sorbara:** Yes.

**The Chair:** Thank you. Mr Sorbara.

**Mr Sorbara:** I just want to put on the record, within the context of the motion, that we do not bring the budget back until we have had a report from the government whip on the committee as to what business the government contemplates we will consider during this period, up until the end of the budgetary period. Is that all right? Do not worry about it, this is not a conspiracy. I would just like to know from you and from the government what you think maybe we are going to be doing in the summer.

**Mrs Mathysen:** I was confused about the time frame. I thought you were talking about a time frame beyond—

**The Chair:** Could I interject there for a moment, Mrs Mathysen. Clerk?

**Clerk of the Committee:** Yes. I want to clarify something that Mr Sorbara just asked. The end of the budget year would also include the following winter recess. I assume you just want information on this summer's recess.

**Mr Sorbara:** Whatever budgetary period we are looking at. If we are writing a budget from now until next March, I do not think they are going to be able to speculate as to what they are going to do, but I would like to know what we propose to do during the summer period. While we are sitting next September the budget is pretty easy to determine and we do not travel during those times.

**Mrs Mathysen:** As I said before, I will discuss with the House leader what the plan is regarding this summer and come back with a report regarding how long we are going to sit this summer.

**The Chair:** Regarding how long we are going to be sitting?

**Mrs Mathysen:** Yes.

**The Chair:** Not with regard to what specific legislation or proposal that is going to be forthcoming?

**Mrs Mathysen:** No, just what the plan is—will we be sitting in the summer?

**Mr Poirier:** With all due respect, I think it is extremely important to also know what we may be considering, because this may obviously impact on whether we are going to sit in Toronto or move across the province. What we are going to study might also impact how much time we will need to travel this summer. There is no way we can respectfully make a decent budget for this if we do not have an idea what is going to be studied, because this may determine where we will study this and how long we will study this. Of course, from my previous practice, we better make sure that if we present a budget, it is as realistic as possible, because having to go back on a regular basis to the Board of Internal Economy to have this considered is a bit of a complication. So I think it is very important to be as precise as possible—what, where, when, how much it will cost. We will need that. That is not an option; it is very much a necessary type of information.

**Mr Sorbara:** I want to give my friend the member for Middlesex some comfort. I am not trying to secrete out of her private, secret information about the government's plans. The government may well have it in its head to introduce a bill that no one has ever heard of in June and refer it to this committee. I do not expect you to tell me about that. What I expect you to do is just to bring the overall plans that the government has already discussed with the other House leaders to focus as far as they impact on this committee. For example, do we expect to be considering a Sunday shopping bill in this committee, or as my friend the member for Durham East calls it, the common pause bill. And you may not get it through on second reading. You know, "The best laid plans of mice and men," etc. So again, this is not a conspiracy. We are not trying to find out the deepest secrets of the government of Ontario. We just want to know what you plan for us in broad terms. We do not expect that all of those plans will be realized, but if we knew that, we could do a better job of asking for the amount of money we need to fulfil those plans.

**Mrs Mathysen:** I thank Mr Sorbara very much. My confusion resided in his description. When he said with regard to the entire budget, I thought he was talking about the end of the fiscal year and my confusion arose from his lack of clarity in that.

I will go to the House leader and I will consult with her regarding this summer's activities as best I can, and I am sure the House leader will give that report as best she can, because of course it does depend on co-operation with other House leaders. By virtue of the fact that we cannot be absolutely sure about what legislation is passed and what comes to us, I cannot absolutely say what we will be considering, but I will discuss it with the House leader and we will be as clear as we can be after that discussion.

**Mr Sorbara:** Is that not marvellous, Mr Chair? Absolutely marvellous. There is a new spirit of co-operation which is going to last about another two minutes.

**The Chair:** Can we now entertain a motion to set aside the budget until that discussion.

Motion agreed to.

1610

**The Chair:** We have in front of us a schedule prepared by the clerk. Any comments on that schedule for 30 April and 6 May?

**Mr Sorbara:** I think my comments on this schedule are regrettably going to be rather lengthy. I am not sure what you propose for the rest of the day. Might we just review that? I am not saying I am going to take up the rest of the day; I am not. I am not going to go on at great, great length, but given the information that has been given to me by the vice-chairman of this committee, I do have some objections to make about this schedule.

**The Chair:** What we had planned for the rest of the day was a discussion of directions to the researcher with regard to conflict of interest, which I would imagine to be a fairly significant piece of business this afternoon.



**Mr Sorbara:** Okay, so we will consider this schedule and then we will move on to directions to the researcher on the preparation of the report. Is that right?

**Mr Harnick:** Can I ask something before Mr Sorbara goes into the schedule. The directions we will be giving to the researcher will be about writing the report commencing now, or commencing after we have examined the material and heard the witnesses?

**Mr Fletcher:** Are you asking?

**Mr Morrow:** Who are you asking?

**Mr Harnick:** I am asking the Chair whether we are going to consider the bill or the guidelines and the bill, because I know that our mandate also includes reviewing the Conflict of Interest Commissioner's very detailed proposed amendments to the bill, and no doubt everyone has the bill with him and has read it. No doubt about that.

What my question is, are we going to tell Susan Swift to prepare the report before we have had a chance to examine all of this material, or are we going to take our time and do it properly and examine this bill, these recommendations, the Premier's very detailed list of concerns, as well as the guidelines, and then prepare the report with our recommendations? Are we going to do this without regard to hearing the witnesses, to reviewing the material and make a mockery of this whole proceeding?

**The Chair:** Mr Winner.

**Mr Harnick:** I am not quite finished.

**The Chair:** I am sorry, I thought you had finished, sir.

**Mr Harnick:** I cannot believe that there is a person in this room who has the ability to instruct Susan Swift before we have reviewed the material, if we are really after obtaining a realistic and detailed report as we have been requested by the Premier. Those are my preliminary comments.

**Mrs Mathysen:** As I am sure Mr Harnick knows, we made a decision yesterday that we would today give instructions to the researcher, and that is what we intend. As was pointed out very clearly and emphatically yesterday, we had a number of witnesses in the month of February. We had some very good input from those very talented and clear witnesses. We have had two months to consider that. We have material in our possession. We have had time to look at it, and now the time has come to begin to give instructions to the researcher so that we can, on 30 April and on 6 May, hear from others, fine-tune that recommendation and finalize it on 7 May. That was made very clear yesterday. I will reiterate it here today. That was what we decided.

**Mr Harnick:** Who is going to be giving these instructions to the researcher?

**Mrs Mathysen:** We are. We will, together, as a group, give instructions to the researcher, based on the information that we have here. We will discuss it and we will put together a package of conflict-of-interest guidelines that are the envy of all, because they will provide our government, our ministers, with very clear direction about the kind of conduct the people of Ontario deserve and expect from government.

**Mr Harnick:** No doubt we have seen a good example of the way these guidelines are working in the last couple of weeks, and I think that if we rush this process through, we will do our utmost to make those guidelines even worse and even more confusing. You have the numbers on this committee, and you have the opportunity to invoke your—

**Mrs Mathysen:** Mr Harnick, we have an opportunity here and now to create and you are here to contribute to those. You can contribute in a positive way or not.

**The Chair:** Mrs Mathysen, excuse me, if you would like to raise your hand, I will recognize you after Mr Sorbara. Mr Harnick still has the floor.

**Mr Harnick:** I look forward to seeing how you are going to give those instructions to Ms Swift, and I am quite sure that I will be enlightened by those as well, in light of how well the conflict-of-interest guidelines have been interpreted to date, and in light of the volume of work that has not been—

**Mr Fletcher:** On a point of order, Mr Chair: This is not a comment on what has been going on. We are going to be discussing his statements—

**The Chair:** Thank you, Mr Fletcher. Mr Harnick, would you proceed.

**Mr Harnick:** In light of the volume of work still to be done, I do not recall—and Mrs Mathysen has said that we have been considering these guidelines for two months. My recollection is that we have been considering Bill 17 for two months and that we spent three or four days in a preliminary look at these guidelines. I do not recall reviewing anything that the commissioner has recommended. I do not recall reviewing anything regarding the guidelines that the Premier has asked us to look at. If Mrs Mathysen can do the superhuman job of writing the report before we review all this material, all the more power to her, because it just shows me how serious the government and the Premier are about these guidelines, and that is confirmed by the proceedings during question period today.

**Mr Sorbara:** I am going to suggest to Mrs Mathysen that I am going to be a few minutes with my comments and then I will regrettably have to leave the committee, so I am not going to be able to stay around for her comments on the work that we are to undertake today.

I think the member for Willowdale did make an appropriate point when he referred to the events that are unfolding in the province right now relating to the conduct of the Solicitor General. No one, really, is very happy—

Interjection.

**Mr Sorbara:** No one takes any joy in the conduct of a minister—

**Mr Fletcher:** On a point of order, Mr Chair: Are we discussing the conduct of the minister right now or are we discussing something else?

**Mr Sorbara:** Mr Chairman, if I might, on the point of order, we are talking about the conflict-of-interest guidelines.

**The Chair:** Mr Sorbara, are you speaking to the—

**Mr Sorbara:** I am speaking to the conflict-of-interest guidelines and the mandate that we are going to give the researcher. Now look, I do not really want to play this game this afternoon. If you are going to let me, I will make my remarks, but if you want to interrupt with a series of points of order, then just let me know. I will pack up my toys and I will go on to do other work. Now, what is it going to be?

**Mr Fletcher:** If you would just talk about what you want to talk about and—

**Mr Sorbara:** I will tell my friend—

**The Chair:** You have the floor, sir. Go ahead.

**Mr Sorbara:** No one takes much joy, really, either in opposition or in government, to have to go through what is going on right now in respect of the conduct of the Solicitor General. Let me tell you that nobody has suggested that the Solicitor General is not an honourable person and that he is not as honest as—

**Mrs Haslam:** On a point of order, Mr Chair: I would like us to get back to the guidelines. If he has any suggestions as to how we can give instructions to the researchers, then that is what we are here to discuss, I thought.

**The Chair:** Actually, I believe we have the schedule before us as well, and Mr Harnick wished to address how the deliberations of today would relate to that schedule, which was a slight diversion from our discussion of the schedule. But I think your point of order still stands. Mr Sorbara.

1620

**Mr Sorbara:** Thank you. As I was saying, no one questions the integrity or the honesty or the honourability of the—

**Mrs Haslam:** On a point of order, Mr Chair: Is this on the agenda? Are we discussing the agenda now?

**Mr Sorbara:** I am going to try and help out Mrs Haslam just once. We are talking, my friend, about guidelines for ministers.

**Mrs Haslam:** Mr Chair, could you speak up. I cannot hear you, Mr Chair.

**The Chair:** Mrs Haslam has the floor raising a point of order.

**Mrs Haslam:** On a point of order: Are we discussing the schedule and the conflict-of-interest guidelines? Are we discussing the schedule right now and the idea that we are going to be giving some directions to the researcher? That is what we are discussing.

**The Chair:** We are indeed.

**Mr Sorbara:** Are we discussing the schedule—

**The Chair:** The schedule of witnesses for next week and the following week, yes.

**Mrs Haslam:** Thank you.

**Mr Sorbara:** My purpose in making these remarks to this point is in respect of the schedule. Yesterday we agreed in this committee that the Premier would be a witness before this committee. I had asked this committee—my good friend Mrs Haslam was not here—through its Vice-Chair to bring forward to this committee a number of

witnesses. That list included the Honourable Gregory Evans, Conflict of Interest Commissioner; George Mammoliti, MPP for the Toronto riding of Downsview, and Mr Perruzza, another Toronto MPP, both of whom, as it appears, have not disposed of assets in accordance with the conflict guidelines. We also asked that the Premier attend here for further examination in respect of his guidelines.

Yesterday we were assured by the Vice-Chairman of this committee that the Premier was willing to attend. In fact, it was confirmed by Mr Morrow that all of the witnesses we had asked to appear before the committee were willing to appear, with the one exception of the Minister of Community and Social Services, the Honourable Zanana Akande, and the reason why Ms Akande could not appear, we were told, is because she is under investigation, or matters relating to her compliance with the conflict-of-interest guidelines were under investigation.

Mr Chairman, let me assure you that committees like this have undertaken those very sorts of investigations many times in the past, for years and years. In fact, that is one of the things that a legislative committee like the committee on the administration of justice does. If our House leader, Murray Elston, has not already brought forward a motion in the House that the matter of the conduct of the Solicitor General be referred to this committee, then I suspect he will soon do so.

I am talking about what we should be doing in this committee in respect of the guidelines and the instructions that we are going to give to the research officer. But in order to direct the research officer in her work, we need to know how these guidelines are actually working in practice and we need the Premier to be here to answer some very important questions about when the Minister of Community and Social Services resigned her directorships and when the Premier was advised about her ownership of a particular property.

We also, by heaven, need to ask the Premier how in the world he can publish guidelines in December and present them to Parliament, through a minister's statement, and distribute those guidelines to the Parliament and to the press and to the public and charge this committee with the responsibility of considering those guidelines, and then, some two months later, publish a private set of amendments to those guidelines which qualify very significantly the obligation to dispose of assets, which is the heart and soul of the Premier's new guidelines. We need to know that.

Do you not realize how surprised we and our researchers were when we found out in mid-April that the guidelines that we were given in this committee, which are contained here, were qualified by a private memo from the Premier to "Cabinet Ministers, Parliamentary Assistants and Caucus Members," setting out a number of qualifications, setting out what, in the Premier's view, it was not necessary to divest, to sell, to get rid of?

We need to know from the Premier whether that memo is an amendment to the guidelines we are considering, and we need to know how he came to draft that amendment, because if I say to you publicly, "Sir, you must sell your business assets," and then I say to you privately, "But you



will not have to sell some of the assets, and here is why," then the very process that the Premier has asked us to undertake is compromised.

We asked a series of questions about a number of ministers, including the Minister of Culture, Elaine Ziemba, and the Minister of Community and Social Services, Zanana Akande, about assets that they had not sold, and I want to tell my friend Mrs Haslam we were genuinely surprised. Our researchers were genuinely surprised because the disclosure statements said that they retained business assets. Compare that to the guidelines, and the guidelines said these sorts of assets have to be disposed of within 60 days.

We remembered that there had been an extension to 31 March. The day after the extension, two days after the extension, actually, on 2 April, the Premier himself issued a press release saying that all ministers had complied. And yet our researchers, looking through the document that was submitted to the conflict commissioner, found that assets had not been disposed of. We did our research and we found that, lo and behold, these assets were still owned by ministers, and we could not square that with what the Premier had said and done, because in his guidelines as well there was an undertaking by him personally that if he made an exception—

**Mr Fletcher:** On a point of order, Mr Chair: Are we talking about the agenda?

**Mr Harnick:** Very much so we are.

**Mr Fletcher:** No, that does not sound like the agenda.

**Mr Sorbara:** Just to respond to the point of order, Mr Chairman, we are talking about the agenda and I am explaining why it is important to have the Premier here, okay?

**Mr Fletcher:** Mr Chair, are we talking about the agenda?

**The Chair:** Mr Sorbara, I think you are making some excellent points and you want to confine them to what is on the agenda or what is in absence.

**Mr Sorbara:** Mr Chairman, as I understand it, I can speak to this topic for a while. This is a very important topic, and I am not—

**The Chair:** No one is suggesting you do not, sir. Go ahead.

1630

**Mr Sorbara:** The Premier, as it turned out, had issued qualifications to his guidelines. The qualifications to the guidelines set out a number of instances where ministers would not and parliamentary assistants would not be required to sell or dispose of their assets. Those qualifications have led to a serious cloud hanging over the head of the Minister of Community and Social Services, and a cloud as well, I suggest to my friends on this committee, over the head of a number of other ministers and parliamentary assistants. We need to clarify that.

But even more important, we have this problem on this committee: The Premier was sitting there and testified eloquently, as he always does, about his guidelines, but he has not yet testified before us about the guidelines as they now stand or as they are qualified. When he testified here, he

was working on the basis that ministers would have to dispose of their assets. He had not yet prepared this major addendum to the guidelines, and so we need to hear from the Premier about whence this amendment, and why the amendment was not referred to this committee, and why the amendment was not made public.

**The Chair:** Mr Sorbara, you are raising a point about the Premier's absence from the agenda, is that right?

**Mr Sorbara:** Mr Chairman, you invited—

**The Chair:** And the clerk whose responsibility it was to invite the people—

**Mr Sorbara:** Now do not blame the clerk.

**The Chair:** No, I am not blaming the clerk, but I think the clerk should maybe have the opportunity to address what is the 4:30 to be confirmed.

**Clerk of the Committee:** The 4:30 to be confirmed is Mr Kormos.

**The Chair:** Thank you.

**Mr Sorbara:** Okay. By the way, Mr Chairman, it has already been confirmed to me by Mr Morrow, your Vice-Chair, that the Premier will not be attending.

**Mr Morrow:** That is right.

**Mr Sorbara:** Yesterday it was confirmed to me that the Premier would attend, and that is what I am speaking to, if you do not mind.

I was speaking about the amendment to the guidelines, the document that—

**The Chair:** This absence, though—my apologies as Chair—I was not aware that was the problem. It had not been brought to the committee's attention as a whole that the Premier was not going to be attending, and certainly not to my attention.

**Mr Sorbara:** Here is our problem: This amendment, this document, which all of you received, all of you caucus members for the New Democratic Party received—

**Mr Mills:** I cannot remember.

**Mr Sorbara:** —has not even yet been referred to this committee. The Premier has not stood up in the House and referred the document to the committee. Do you want to hear something even more shocking? I could not believe it until we got confirmation of this in writing.

**Mr Morrow:** On a point of order, Mr Chair: Please, will you please address the agenda, Mr Sorbara.

**Mr Harnick:** He is addressing the agenda.

**Mr Morrow:** He is not.

**Mr Sorbara:** I am making arguments to support the proposition that the Premier ought to come before this committee, and we are discussing our agenda right now.

As I was saying, Mr Chairman, even more shocking—  
Interjection.

**The Chair:** Mr Sorbara has the right to speak at whatever length he wishes to about the agenda. He is speaking about the agenda. Go ahead.

**Mr Sorbara:** I am making arguments for the proposition that the Premier ought to be requested once again by this committee to come and appear.

**Mr Fletcher:** Then move an amendment.

**Mr Sorbara:** Even more shocking than the fact that this was a private memo given to government members is the fact—now get this—that memo was not even sent to Gregory Evans, the conflict commissioner.

**Mr Morrow:** What memo? We did not get a memo.  
Interjections.

**Mr Sorbara:** Now, just a second. Can I—

**Mr Harnick:** We do not know—

**The Chair:** Mr Sorbara has the floor.

**Mr Sorbara:** Now this is interesting, Mr Chairman, because the government members are shaking their heads and saying they never got the memo. This is shocking.

**Mrs Haslam:** We do not know what you are talking about.

**Mr Sorbara:** Okay. I will—

**Mrs Haslam:** Clarify what you are talking about, Mr Sorbara.

**The Chair:** Mr Sorbara has the floor.

**Mr Sorbara:** I will in due course produce that memo, and I will tell you what is in it, because it is not only shocking and surprising but really appalling that one, two, three, four, five, six—

**Mrs Haslam:** Do not count me. I said clarify.

**Mr Sorbara:** Oh, okay. Well, some members of the government are denying any knowledge of it.

**Mr Fletcher:** I have a point of order, Mr Chair.

**The Chair:** Mr Fletcher on a point of order, Mr Sorbara.

**Mr Sorbara:** I am going to table it before the committee.

**Mr Fletcher:** Mr Chair, are we talking about the agenda, are we talking about a secret memo, are we talking about the contents of the bill? I thought the item for discussion was the agenda.

**The Chair:** Mr Sorbara's discussion of the memo, whatever it was, is I think still in order as it is his rationale for including the Premier on the agenda. Mr Sorbara.

**Mr Sorbara:** Mr Chair, a few days ago—oh my God, no, it was just yesterday; forgive me—this committee passed a motion over our strong objection to in effect limit the discussion on the conflict-of-interest guidelines. Today we have a minister whose very reputation is clouded and who is the subject of an entire hour in question period, because he refused to do the honourable thing. I just want to suggest to my friends on this committee that if they have not seen a copy of this memo, then there is something rotten in the state of Denmark, and I would hate to think that this memo was just—

**The Chair:** Mr Sorbara, are you going to circulate that memo?

**Mr Sorbara:** No, I am not. I do not have a copy of it. I am going to read it into the record. Just to set the background for this memo, you recall the guidelines. You have all read the guidelines, okay, and you have all read the Members' Conflict of Interest Act.

**Mr Mills:** And the letter of extension.

**Mr Sorbara:** And the letter of extension. Okay. You have probably seen the press release and all of that. Now I hope that members will, after I read this memo, acknowledge whether or not they have actually ever seen it or heard of it. It is on stationery of the Premier of Ontario. Given what has happened today with the Solicitor General, maybe this does not mean anything. I do not know. It is dated 12 February 1991. It is a memo to "Cabinet Ministers, Parliamentary Assistants and Caucus Members." It is from, purportedly, "Bob Rae, Premier." The subject is "Conflict of Interest." If my friends down at the back of the room could actually make a copy of this memo, I would distribute it to the other committee members. In the meantime I will just tell you what it says.

"As you know, in December I released conflict-of-interest guidelines for ministers and parliamentary assistants. These guidelines will be considered by the members' services committee starting February 18, 1991." Now, that is wrong. It is not the members' services committee. This is the standing committee on administration of justice, but I forgive whoever wrote this memo for making that error.

"Because of the number of members who are in fact in the process of divesting themselves of interests, I want to let you know that the date for compliance with the guidelines will be March 31, 1991.

"The guidelines are tougher than the legislation, and as such I have been considering how the specific rules that we have agreed on will be applied in specific cases." You see that? He is qualifying the rules.

"My office will be in touch with affected individuals, but I wanted to let you know of these general rules that will, I hope, clarify some of the guidelines." You see, the Premier is admitting there that he is clarifying and modifying the guidelines.

"In terms of financial and business interests, the main areas of interest fall into three categories: ownership of rental property, financial investments and RRSPs."

Now, the subheading reads "Rental Property." The Premier says, "I do not consider rental of rooms or apartments in owner-occupied property a conflict of interest." He says, "I don't consider it a conflict of interest." The guidelines are silent on that, but he says, "I don't consider it a conflict of interest." "However, ownership of rental property does pose the potential for conflict."

Now, this next paragraph I think is extremely important: "I am aware that market prices have fallen substantially and that to force divestment at this time would create hardships for many members."

Just pay attention for a second, because in the guidelines he is saying, "You have to divest," but in this private memo, not made public, he is saying: "We're in a recession. Times are tough out there. You are going to put an apartment building or a business up for sale and there are going to be no buyers. So we'll have to make some concessions."

"I will, then," he says, "allow to be held as assets property consisting of a single-family dwelling, condominium or other such dwelling in addition to an owner-occupied dwelling. This in no way affects the prohibition of members



acquiring an interest in land in Ontario except for personal residential or recreational use or, where there is an existing farm, additional working farm land."

What he is saying in effect there is, "There's a category of property that you don't have to sell, and besides, I understand in a down market you might not be able to sell property that eventually I want you to sell."

Did we know about this memo? No. I could call one of our researchers, because he was terribly confused about the fact that Akande and Ziembra still had property and the guidelines said "Sell."

Now, the second heading is "Financial Investments." "Investments in specific companies, including debentures and stock, must be divested. Mutual funds administered by an arm's length financial institution are permitted."

Why is that? I have no idea. A mutual fund could, even if it is administered at arm's-length, contain stocks in energy companies, stocks in Bramalea, stocks in heaven knows what, Eaton's, Simpsons or whatever. There is nothing special about a mutual fund that would not give rise to a conflict. But for some reason the Premier has said, "Mutual funds administered by an arm's-length financial institution are permitted." Would it not be appropriate if this committee heard testimony from the Premier about why he was permitting the retention of those sorts of mutual funds?

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The next heading is "RRSPs." "Self-administered RRSPs are prohibited,"—I can understand that; a self-administered RRSP means that I, as the administrator, have to actually do the trading on the stock market—"and must be converted," he says, "to other forms of RRSP investment."

So if my RRSP is not self-administered, I can own stocks in all sorts of companies as long as some other person is administering them. That is closer to a minister than the management trust that we set up under the law that is now in place and enforced by Gregory Evans. The relationship between an owner of an RRSP is much closer to the assets than is that of a trust which is administered at arm's length to the beneficiary of the trust; in this case, the minister. I know. I was the beneficiary of a trust and it cost me several thousands of dollars to establish that trust and manage it in compliance with the laws of the province of Ontario.

But for some reason Bob Rae says that a self-administered RRSP can be converted to other forms of RRSP investment. Do you not wonder why? Do you not ask yourself, when you propose to give instructions to the researcher, what you would want to say about this in conjunction with what the Premier said in his original guidelines?

Now, under "Other Financial Interests," he says, "I do not consider genuine non-profit enterprises or shares in co-operatives that are bought as a condition of membership to be conflicts." Zanana Akande has shares in a non-profit enterprise. I guess that is why she thinks she is not in trouble.

Do you not think this committee ought to know what the Premier was thinking when he decided that a non-profit enterprise is okay? Some non-profit enterprises are

very large. I will just give you an example: Toronto Trust Cemeteries, a very large undertaking, deals with millions and millions of dollars, buys and sells land all over the greater Toronto area, but it is non-profit. Can you be an officer of Toronto Trust Cemeteries? Can you be a director? Can you be the president? United Co-Operatives of Ontario—are there any farmers on this committee?—is a very big outfit. Can you have shares there? Can you deal in grain on their behalf? What is the answer here? We do not even have the opportunity to pose the question.

The next subheading is "Exceptions and Exemptions," and I am quoting again. "There is provision for an exception to the divestment rule where I can be satisfied that the interest has been fully disclosed, that undue hardship would be created by divestment, that retaining the interest would not be inconsistent with the public interest and that the minister has given appropriate undertakings to avoid a conflict of interest."

Now, I do not have any problem with that and the reason why I do not have any problem with that is because that is not new; that is in the guidelines. We have already heard that. He has already said that to the public and to this committee.

"These decisions," he says, "where made, will be made public."

I would expect that any government member who has seen these amendments to the guidelines ought to interject right now on a point of order and make that fact known.

**Mrs Haslam:** On a point of order, Mr Chairman: As a matter of fact, I did see these and I took it to be clarification of some of the guidelines because I was confused about my RRSP and when this came, I remembered asking this question.

**Mr Poirier:** That is not a point of order.

**Mr Sorbara:** I think my friend is right. It is not a point of order.

**The Chair:** I think Mr Poirier has a point. However, Mr Sorbara did ask a question.

**Mr Sorbara:** I made a suggestion.

**The Chair:** Although it is not a point of order, you did ask a question and Mrs Haslam responded to it. It has nothing to do with the rules of order, none the less, but still—anything further, Mr Sorbara?

**Mr Sorbara:** Yes.

**Mrs Haslam:** On a point of order, Mr Chair: Are we still discussing the agenda?

**The Chair:** Yes, we are.

**Mr Sorbara:** Yes, we are. We are still discussing the Premier's refusal to come before this committee and give further testimony so that we can do a better job of commenting on his guidelines.

I know what Mrs Mathysen wants. She wants a report from this committee and by God, she is going to get it. She wants a report from this committee saying that the Premier's guidelines are the best thing since sliced bread.

**Mrs Mathysen:** Mr Sorbara, whatever you are, you are not a mindreader. I will tell you what I want.

**Mr Sorbara:** Mr Chairman, this is not a point of order.

**Mrs Mathysen:** I want to get on with the business of this committee.

**The Chair:** Will you allow Mr Sorbara to continue with his—

**Mrs Mathysen:** I am sorry, Mr Chairman. My light was on again and I was tempted.

**Mr Sorbara:** I think your light went off several years ago.

I just want to say that if we could have the Premier come before this committee again, I would ask him about what investigation he did in respect of the matter relating to Richard Allen and Ed Philip in the Red Hill Creek Expressway matter. I would ask him the basis upon which he threw Tony Rizzo out of caucus. I would ask him whether or not the Solicitor General even tendered his resignation. There is no doubt at all in my mind that the Solicitor General violated the guidelines on conflict. He is not a bad man. Violating guidelines does not make you a bad man.

**The Chair:** Mr Sorbara, excuse me. We do have a microphone system in the room.

**Mr Sorbara:** Mr Chairman, I really appreciate your reminding me of that.

As I was saying, I think I know what Mrs Mathysen wants. She has already said it, in fact. She mentioned that these were the best guidelines and the most stringent guidelines, if I am quoting her—

**Mrs Mathysen:** I said we wanted to create them, here, together, co-operatively.

**The Chair:** Do not fight Mr Sorbara, having addressed you.

**Mrs Mathysen:** But I do not think, Mr Chairman, that he should misquote me so.

**The Chair:** You will have an opportunity to correct the record after Mr Sorbara has finished his oration.

**Mr Sorbara:** Thank you very much, Mr Chairman. You are doing a marvellous job of trying to keep your unruly colleagues in order and I know it is a very difficult job, particularly in the case of the member for Middlesex.

What I would like to get out of this committee is a real opinion on the Premier's guidelines, and I am going to find that very difficult to do unless the Premier comes back here and testifies in respect of the amendments to the guidelines that he had made.

By the way, can I just read you a letter from Gregory Evans, the commissioner, to our researcher?

**Mrs Haslam:** On a point of order, Mr Chair: With all due respect, I would like to get on with some of the business of the committee and I do not see any reason why we should use Hansard as a means of reading letters. I would like to know if we are still discussing the agenda.

**Mr Poirier:** These are not points of order. Please.

**Mrs Haslam:** Oh, I am sorry.

**The Chair:** It is a legitimate point of order; however, it is not accurate.

**Mr Sorbara:** The letter from His Honour Mr Justice Evans states as follows, "Further to your memorandum of April 15 addressed to Lynn Harris, please be advised the commission has not received any amendments to the December 12 guidelines." Signed, "Yours very truly, Gregory T. Evans."

Knowing Mr Justice Evans, I am sure that he signed this letter and not somebody else.

Pretty soon the government members are going to join forces and give direction to our research officer on these guidelines, to write a report before we have heard evidence on crucial matters relating to the enforcement of the guidelines. I accept that that is going to happen, so I just want to make a few comments about what I think the report should say.

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**Mrs Mathysen:** That is what he should be doing when we actually get to the instructions.

**Mr Sorbara:** That is what is on the orders.

**Mr Morrow:** Mr Chairman, on a point of order: Mr Sorbara's giving us a few points on what should be in that report is not part of the agenda.

**Mr Sorbara:** It certainly is. I beg to differ. That is what you call really discussing the agenda and the directions that are going to be given to the researcher.

**The Chair:** No, Mr Sorbara. We are discussing the tentative agenda as set out. You were discussing the absence of the Premier.

**Mr Sorbara:** Right.

**The Chair:** The instructions to the researcher were not to occur until after we have approved this tentative agenda.

**Mr Sorbara:** Right.

**The Chair:** This is, I believe, a legitimate point of order.

**Mr Morrow:** Thank you very much.

**The Chair:** Mr Sorbara, could you confine your remarks to the agenda.

**Mr Sorbara:** Mr Chairman, in considering the agenda, I would want to hear from someone who is not on our list right now, so I am going to move a motion that in the absence—

**Mr Mills:** I am not on the list.

**Mr Sorbara:** We hear from you all too much, Gord.

I am going to move a motion in a few moments requesting the committee to ask the Solicitor General to appear before this committee. My friends on the committee might think that is a little bit too sensitive, but ask yourselves this question. What better way for the Solicitor General to clear his name than by coming before a legislative committee and testifying as to exactly how it came to be that a letter on his letterhead, with his signature or his name signed on the letter, came to be written to a justice of the peace asking, in effect, that a ticket be fixed?

Someone commented during question period that this is just a low-grade ticket-fixing operation. But that is a



serious charge. Interfering with a judge and his determination of a matter is a very serious charge.

**Mr Harnick:** I've seen JPs lose their jobs for that.

**Mr Sorbara:** People's reputations are destroyed forever on that basis. Do you know something? if Mike Farnan does not step down and let this matter be resolved independently—

**Mr Fletcher:** On a point of order, Mr Chairman: Are we talking about the agenda or whether or not Mr Farnan—

**Mr Sorbara:** Yes, I think very clearly. I am making two points. One, that the Premier should—

**Mr Fletcher:** I am not asking Mr Sorbara; I am asking the Chair. Are we talking about the agenda or are we speaking about whether Mr Farnan should step down? I think there is a clear distinction. Either he should be here and that is what you are saying—whether or not he should step down is another point, and that is a personal point.

**The Chair:** Do you wish to include Mr Farnan on the agenda?

**Mr Sorbara:** I am doing something that I think is really simple and straightforward. The government members—I mean, just realize—

**The Chair:** Mr Sorbara, are you making an argument that Mr Farnan appear?

**Mr Sorbara:** I am trying to make the argument that Mr Farnan appear before our committee in lieu of the Premier, if it turns out that the Premier is not willing to attend, but in addition to the Premier if the Premier changes his mind again and agrees to attend.

**Mrs Haslam:** Is that a motion?

**Mr Sorbara:** I will make the motion in due course, my friend. We are talking about the agenda and so I am trying to make the argument.

I do not think any of you realize that this thing will live with Farnan for the rest of his political life, and if he does not clear it up now, it is just going to get worse. If the Premier continues to stonewall and not do an independent investigation and not let somebody else look at the evidence as to who authorized the writing of the letter and who actually signed the letter and how the letter came to be sent and why Ed Philip, the Minister of Transportation, or his ministry did not twig to the fact that someone was asking—

**The Chair:** Mr Morrow on a point of order.

**Mr Morrow:** Thank you very much, Mr Chair. I thought we were speaking to the agenda here.

**Mrs Haslam:** We are.

**Mr Sorbara:** Oh, goodness, if I cannot make a case for calling Mike Farnan—

**Mr Morrow:** Mr Chair, we are also looking at the fact that yes, Mr Farnan is being investigated by the RCMP. That was brought up in the House today and Mr Sorbara does know that.

**Mr Sorbara:** All I can tell you is that every time the government members interrupt on these silly, foolish and

inappropriate points of order, it just shows how nervous they are.

**Mrs Haslam:** We want to get something done.

**The Chair:** Mr Sorbara, continue please.

**Mr Sorbara:** The problem that Farnan has is that the only one who has stood in judgement of him so far is Bob Rae, the Premier of the province. Now, his judgement might be accurate, but would it not be better if the minister stepped aside from his office and allowed an independent investigation?

You folks want to get this conflict-of-interest matter wrapped up really quickly. Well, can I just tell you something? Your motion of yesterday requiring that the report be written, starting as of today, and be finished as of 6 or 7 May or whatever will not make these situations go away.

**Mrs Haslam:** Mr Chair, he seems to be wandering and telling us things and I would appreciate if we could discuss points towards the agenda and come to some conclusion about this agenda.

**The Chair:** Mrs Haslam does have a point. Perhaps you could address yourself to the agenda, Mr Sorbara.

**Mr Sorbara:** I think the agenda is conflict of interest and the schedule of witnesses, and my arguments are that Mike Farnan ought to be here as a witness.

**Mrs Haslam:** Point made.

**Mr Sorbara:** I hope we are going to hear some party arguments in rebuttal of that, why you do not want to listen to Mike Farnan and why you do not want to ask him questions. You may take that view, and that is a reasonable view. You may want to be the Solicitor General some day. You may want to measure carefully what you say in this committee about how you think a Solicitor General ought to operate. Personally, I have a great deal of respect for the Solicitor General. My respect has fallen somewhat over the past day. Not because of the letters but because, as I understand it, he did not even have the courtesy to offer the Premier his resignation. I may be wrong on that and I would like to question him about that in this committee.

**Mrs Mathysen:** On a point of order; Mr Chair. Mr Sorbara knows there is an RCMP investigation going on and that it is highly inappropriate for Mr Farnan to be here. What he is basically doing is just wasting a lot of time discussing something that is not pertinent.

**The Chair:** Thank you, Mrs Mathysen. Mr Sorbara?

**Mr Sorbara:** Number one: that is not a point of order.

**The Chair:** Mr Sorbara, I have already ruled on that.

**Mr Sorbara:** Number two: there is no prohibition about ministers or anyone coming before parliamentary committees in situations where a police investigation is going on. Number three: Mr Chairman, I would move—

**Mrs Haslam:** Is this a motion, Mr Chair?

**Mr Sorbara:** —and I hope I get the support of some government members—that this committee reissue an invitation to the Premier, the Honourable Bob Rae, and Mike Farnan, currently the Solicitor General, to appear before this committee and that time be made available at this

committee to hear their testimony and have them answer our questions.

**The Chair:** Mrs Mathysen, do you wish to discuss the motion?

**Mrs Mathysen:** I can only reiterate again that there is an RCMP investigation going on. It is not appropriate to have Mr Farnan here. We have extended an invitation to the Premier, and because of his agenda he is not able to be here, at least at this point in time it seems not. We propose that the Deputy Premier or Mr Hampton, the Attorney General, be invited to fill in the time slot Mr Sorbara refers to, or perhaps Mrs Caplan be invited, but it is not appropriate to have Mr Farnan.

**The Chair:** I am sorry; the clerk points out to me that Mr Sorbara's motion is—

**Mrs Haslam:** Point of information or point of clarification Mr Chairman: If somebody makes a motion and then leaves, does that motion stand? Do we get to vote on it?

**The Chair:** Yes.

**Mrs Haslam:** Thank you.

**The Chair:** The clerk points out to me that we have already requested the Premier's attendance. Unfortunately he is out of the country on one of those days, and the other day he is not able to come due to other commitments. However, Mr Sorbara's motion is still quite appropriate, seeing that we are talking about some other time not presently fixed.

**Mr Winninger:** Am I still on the list?

**The Chair:** You are, sir. Would you like to speak to the motion in front of us?

**Mr Winninger:** Mr Sorbara has spoken at great length on issues that are of interest to him and possibly even to his party. These are all issues that might be more appropriately addressed during question period in the House. I think they deal with interpretation of the guidelines in specific instances, rather than the guidelines themselves, which we have to consider. To that extent, I think Mr Sorbara departed from the pith and substance of this particular motion, which is one of scheduling.

**Mr Harnick:** You were not even here when he was speaking.

**Mr Winninger:** I heard most of what he said.

**The Chair:** Mr Harnick, Mr Winninger has the floor.

**Mr Winninger:** When people speak in circles, it does not matter when you come or when you go.

**Mr Harnick:** How can you say that when you were not here?

**The Chair:** Mr Harnick, it is inappropriate to discuss absence—

**Mr Harnick:** On a point of order, please, Mr Chairman: My point of order is very direct. Mr Winninger is making comments about Mr Sorbara's submissions to this committee, when he was not here for 20 minutes.

**Mr Fletcher:** That is not a point of order.

**The Chair:** It is not a point of order. Thank you.

**Mr Harnick:** Let me finish. Why is that not a point of order?

**The Chair:** It is not only inappropriate; it is not a point of order.

**Mr Winninger:** To continue from where I was interrupted, I heard Mr Sorbara speak for 20 minutes and I am basing my comments on what I heard him say. Obviously, I am not basing my comments on what he said when I was out of the room. All I am saying is that I heard what he said. I am suggesting that he spoke at some length about specific instances concerning the interpretation of these guidelines. I do not think that matter is properly before the committee on a scheduling motion. I know Mr Sorbara does not want these conflict-of-interest guidelines, but he certainly cannot extend the time for discussion indefinitely with the fond hope that four or five years from now, if he is back in government, these conflict-of-interest guidelines may never have been passed.

**Mr Harnick:** I have another point of order. I do not know how Mr Winninger can say what Mr Sorbara wants or does not want.

**Mr Winninger:** This is not a point of order.

**Mr Harnick:** Let me finish. Mrs Haslam was quick to jump on Mr Sorbara.

**The Chair:** I am trying to hear the clerk's advice on your point of order.

I think you have a very good point, Mr Winninger. You have a very good point, Mr Harnick. Mr Winninger?

**Mr Winninger:** He has a very good point?

**The Chair:** You should not be imputing motives to Mr Sorbara. Mr Winninger, you can continue, please.

**Mr Winninger:** I did not know I was imputing motives. I was simply stating the facts.

**Mr Harnick:** That was not my allegation at all.

**Mr Winninger:** In any event, we are dealing with a matter of scheduling. Some of these witnesses whom Mr Sorbara seeks to recall we have already heard from. Mr Sorbara has cited a memorandum that went out to various members of government, interpreting the guidelines—not amending the guidelines, but interpreting the guidelines—and in my respectful submission, that is certainly not a sufficient basis for insisting that the Premier be recalled for that specific reason. Certainly, we are entitled to hear from witnesses. Two days seem to be sufficient to hear from these witnesses, and I do not hear a clear plan from the opposition here. They are not saying, "We need three days, we need five days, we need six days." They are just saying, "We need more time." They are not saying how much time. This could go on indefinitely and quite frankly, there has been quite an adequate amount of time devoted to these guidelines already.

The government is showing an extreme flexibility in extending the schedule, and on that basis I would suggest that you have to attach sufficient weight to Mr Sorbara's submissions; nevertheless, there have to be some time constraints imposed or we could go on for ever.

**The Chair:** Mr Harnick, just for the purposes of the committee, we are not dealing presently with the agenda



before us but rather with Mr Sorbara's motion. Sometimes it can be forgotten.

**Mr Harnick:** I appreciate what Mr Winninger says and he knows that I respect the things that generally tend to come out of his mouth.

**Mr Winninger:** But.

**Mr Harnick:** No "but"—no, not even a "nevertheless." May I suggest that we maybe recess for 10 minutes so that the whips might speak with one another apropos some of Mr Winninger's comments, because we may well be able to avoid any further discussion about this if we can work out—

**The Chair:** So you are suggesting a 10-minute recess.

**Mr Harnick:** I appreciate there is a motion. Yes, if we could have a 10-minute recess.

**The Chair:** Mr Poirier, could you fill in for Mr Sorbara?

**Mr Poirier:** Yes.

**The Chair:** A 10-minute recess is requested so that people can confer about this.

**Mrs Mathysen:** Yes, that would be fine, Mr Chair.

The committee recessed at 1705.

1732

**The Chair:** May we resume, please. Mr Harnick, you had the floor when we adjourned. Mrs Mathysen.

**Mrs Mathysen:** I have a motion regarding the agenda. I move that on 30 April 1991 we hear evidence from the Honourable Gregory Evans, the Conflict of Interest Commissioner, from 3:30 until 6 and on 6 May we hear evidence from George Mammoliti, Anthony Perruzza, the Honourable Elaine Ziemba and the Honourable Richard Allen. On 7 May—

**The Chair:** We already had a motion on the floor from Mr Sorbara. Is there unanimous consent to stand down that motion?

Agreed to.

**Mrs Mathysen:** Should I begin at the beginning?

**Mr Harnick:** Begin at 7 May.

**The Chair:** We will accept the earlier bit as read.

**Mrs Mathysen:** Thank you very much. Carrying on in my forte.

On 7 May we will hear from Paul Wessinger, from Peter Kormos, from the Honourable Ed Philip and testimony will conclude at about 5. From 5 to 6 we will give instructions to the researcher.

On 13 May we will extend an invitation to the Premier and to the Solicitor General, Mr Farnan, to come to the committee. On 14 May we will have a final discussion regarding our report and come back on 27 May to read the report, make sure that it is clear, and that will finalize our report. So 27 May will be a finalization of the report.

**Mr Poirier:** Just a question of words and whatever, but you are going to invite the Premier and the Solicitor General to come, if I remember well our whip's discussion, either on the 13 May or 14 May. You will offer both

days to them according to their availability, if I remember well from our whip's discussion.

**Mrs Mathysen:** One thing I am concerned about is how you can finalize a report until you have had discussion, and that creates a problem.

**Mr Poirier:** I agree.

**The Chair:** Ms Swift is also asking for clarification with regard to the instructions. Is it the intent that there would be an initial report, a draft report on the 13th?

**Ms Swift:** One from the instructions on the 7th?

**Mr Harnick:** I had assumed from our discussion that we would be discussing the contents of the report and instructing the researcher on the 14th. We would then be getting the version of the report back from Susan and discussing it further on that date, if any changes had to be made or whatever, and thereafter it would go through the process that the clerk indicated it had to go through, which was printing, translating, distributing or whatever.

**Mrs Mathysen:** I think obviously on the 7th there would not be enough time in one hour to conclude all that we had to conclude, so that is the point of having extra time on the 14th, to make sure that we are in fact able to conclude.

**The Chair:** And on the 7th, for my own clarification here, you have instructions to the researcher, but what you are saying is that those are not final instructions then.

**Mrs Mathysen:** We will begin and we will conclude on the 14th, because there would not be enough time in just one hour to do all that we had to do.

**Mr Harnick:** Certainly to accommodate Susan Swift, I would be prepared after we give her instructions on the 7th between 5 and 6 o'clock to recommend that if she wanted to, if it was in her best interest in terms of the way she prefers to do this, she could start drafting a draft report at that time so that it all does not fall on her at the last moment. We could then look at the draft report that will be prepared between now and 7 May, and then we would see another addition to the draft report. Once we give the instructions on 7 May, we would then be able to see the next instalment on the 14th, discuss it further on the 14th in light of the evidence we hear on the 13th and have it finalized by the 27th.

**The Chair:** Ms Swift informs me that she cannot prepare a draft report without instructions.

**Mr Harnick:** We would be giving those instructions on the 7th, and between the 7th and the 14th she could start drafting what it was that she wanted to draft after she gets our instructions on the 7th. The only changes that will be necessary would be the addition of the Premier's comments and the Solicitor General's comments in terms of how that would affect the report. Then it would not all come down on her shoulders at the last minute.

**Mrs Mathysen:** Yes, that is fine. I think it was just a matter of being clearer. Your initial comment suggested that we would be expecting her to come up with something for us to consider on the 7th. I think it was just a matter of clarification.

**Mr Poirier:** Could I get the reaction from the researcher if she feels comfortable with that.

**Ms Swift:** Yes, to the extent that the committee will be able to give me instructions between 5 and 6. I can certainly begin writing a report on what you have given me. I could not start a report on the other issues that you have not dealt with obviously. I could come back on the 14th or perhaps even on the 13th, depending on how much you have given me and asked me to do, with a report on the instructions to that time.

**Mr Harnick:** Would that be helpful?

**Ms Swift:** Yes, that would be helpful because at least we would have a start on the report. That would be fine.

**Mr Poirier:** I do not recall getting the whip's comment as to the Premier and the Solicitor General being offered both dates of either 13 May or 14 May. Were you in agreement with that?

**Mrs Mathysen:** The problem is being able to come up with a final discussion, and my concerns are still the same. We cannot have a final discussion until we have heard from them.

**Mr Poirier:** I agree. For the sake of discussion, what if the Premier and/or the Solicitor General cannot come up to the committee until the 14th? If I remember well from our discussion, the member for the third party and I were in agreement that we will try and make arrangements to allow the Premier and the Solicitor General to come on the 14th if they cannot make it on the 13th. Is that correct?

**Mr Harnick:** The preference would be the 13th.

**Mr Poirier:** Of course. The first choice is the 13th, but if they cannot make it, then we would strongly encourage them to come on the 14th. Is that correct? Does that translate well our discussion, Mr Harnick?

**Mr Harnick:** Yes.

**The Chair:** The clerk also wants clarification with regard to the amount of time, on the 13th or whatever date, that would be required of the Premier and the Solicitor General.

**Mr Poirier:** A 50-50 percentage distribution of time in the afternoon between the Premier and the Solicitor General?

**The Chair:** Are we speaking then of an hour to an hour and a quarter each?

**Mr Harnick:** Yes.

**Mrs Mathysen:** That would be fine, but again we will extend them the invitation and perhaps we could make it clear that we will be working on our instructions to the clerk as best we can around that conference with the Premier and the Solicitor General if they accept our invitation.

**The Chair:** Thank you, Mrs Mathysen. With regard to the scheduling, the clerk asks, if there are difficulties with it, if she could get back to the members of the sub-committee to confer.

**Mr Harnick:** Yes.

**Mr Poirier:** Is there a sense that what we are looking at is a proposal for the schedule for which people will be able to show up? Of course I understand that the Premier and the Solicitor General might be a particular problem because they are not aware, but as for the other members that are listed here, can the whip of the government party tell us if these people are aware that they will be coming forward?

**Mrs Mathysen:** I believe they have already been invited, have they not? I believe the people who have already been confirmed are going to be present. I do not see any problem with that.

**Mr Poirier:** So the only two question periods that we might still have are the Premier and the Solicitor General, right?

**Mrs Mathysen:** I believe so.

**Mr Poirier:** Okay. Fair enough.

**The Chair:** Further discussion? Can we have a motion to accept the proposed agenda?

**Mr Poirier:** We already had the motion.

**The Chair:** We have the motion. My apologies. Yes, that was Mrs Mathysen's motion. It was the order that we had some problems with. Any further discussion? All those in favour? Carried.

Any further business this afternoon? Oh, we have Mr Sorbara's motion. Mr Poirier, would you like to address that? Is it still relevant?

**Mr Poirier:** I think it is still relevant. Since we called it, we just might want to vote on it.

**Mr Morrow:** You asked, "All those in favour?" What about "All those opposed"?

**The Chair:** I believe I saw unanimity, sir.

**Mr Morrow:** You did not see my hand.

**Mr Fletcher:** That is right. You did not see my hand up.

**The Chair:** Okay. My apologies. May I go back to that vote again?

All in favour of Mrs Mathysen's motion, please raise your hands. Opposed?

Motion agreed to.

**Mr Morrow:** That is the proper way to do it.

**The Chair:** Would you like a recorded vote?

**Mr Morrow:** No.

**The Chair:** The clerk informs me that Mr Sorbara's motion is now out of order as it has been dealt with substantively in the new motion from Mrs Mathysen. Any further business this afternoon? We are adjourned until 30 April.

The committee adjourned at 1744.



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## Legislative Assembly of Ontario

First Session, 35th Parliament

## Official Report of Debates (Hansard)

Tuesday 30 April 1991

### Standing committee on administration of justice

Conflict-of-interest guidelines

## Assemblée législative de l'Ontario

Première session, 35<sup>e</sup> législature

## Journal des débats (Hansard)

Le mardi 30 avril 1991

### Comité permanent de l'administration de la justice

Lignes directrices  
sur les conflits d'intérêts

Chair: Drummond White  
Clerk: Lisa Freedman

Président : Drummond White  
Greffier : Lisa Freedman

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday 30 April 1991

The committee met at 1536 in room 228.

### CONFLICT-OF-INTEREST GUIDELINES

Resuming consideration of the Premier's conflict-of-interest guidelines.

HON GREGORY EVANS

**The Chair:** I would like to call the committee meeting to order. We have before us the Honourable Gregory Evans, commissioner, conflict of interest, and this is precisely what the hearings are in regards to. I understand we have an agreement for half an hour for each party, and whatever time remains will be divided equally until 6 o'clock.

**Hon Mr Evans:** I have no opening statement. I came here because I was requested and I am available.

**Mr Sorbara:** I am going to begin with just a brief point on the scheduling of the balance of our hearings on the Premier's conflict-of-interest guidelines. We now have a schedule that we have, I should say, reluctantly accepted. There is one major omission from the schedule. The government party had undertaken to arrange for the Premier to come and testify before this committee once again. Obviously, they did not insist that he would be here, but we said we would make our schedule as flexible as possible so we could question the Premier about the additions to his guidelines. I understand now that the Premier has refused to appear before the committee and I just want to express my regret in that regard.

**Mrs Mathysen:** I would like to respond that we, as a committee, undertook to invite the Premier, but his schedule was such that he could not be here and, yes indeed, this schedule was agreed to. When it came to me for my signature, I might point out, the signatures of the other members, the members on the other side, were already affixed to the agreement, so I think Mr Sorbara's suggesting that somehow he was reluctant in this is a misrepresentation of the reality.

**The Chair:** Order.

**Mr Sorbara:** We know that it is unparliamentary to use the word "misrepresent." I did not misrepresent anything.

**Mrs Mathysen:** I am sure you were mistaken.

**Mr Sorbara:** I was told by the clerk that notwithstanding that the Premier had been offered an opportunity to testify on whatever day he chose, at whatever hour he chose, it still was not within his schedule to appear before this committee. I just ask out loud what the Premier has to hide. They are his guidelines that we are discussing. The fact that he refuses to come before this committee and testify as to the addendum to his guidelines should simply be noted for the record, and I regret that.

Now, having said that, I want to welcome Commissioner Evans to our committee and say to him that we are

very glad, sir, that you have agreed to come back before the committee to give further testimony on the conflict-of-interest guidelines that are the subject matter of our hearings.

Commissioner Evans, I would just like to review very quickly the testimony you gave when you were here last. I understand that at that point you presented a number of amendments that you would like to see to the current Members' Conflict of Interest Act.

**Hon Mr Evans:** Correct.

**Mr Sorbara:** I think we are going to take that up; I think my colleagues in the Conservative Party are going to take that up. But in consideration of the Premier's guidelines, I think you said—I am quoting here—"I think that it is a pretty draconian measure." That is the measure to require ministers to divest themselves of their assets under the terms of the guidelines as they appear now. Is that right?

**Hon Mr Evans:** That is correct.

**Mr Sorbara:** You pointed out that the new system will penalize parliamentary assistants who may only stay in office for three or four months, and they would be required to divest.

**Hon Mr Evans:** The parliamentary assistants will be under the same terms and conditions as the members of the executive.

**Mr Sorbara:** You said the blind trust generally in these conflict matters had fallen into disrepute because everyone thought the blind trust had too many eyes. Is that correct? I think we all agreed with that, as a matter of fact.

Now, in response to the opportunity of the Premier to forgo the requirement that a minister divest—that is, relieve the minister of his responsibility to divest under an undue hardship provision—I think you said that might vary according to the financial position of a particular minister; that is what undue hardship is. I think you said that becomes very difficult. Could you just expand on that and the problems with applying undue hardship in each case?

**Hon Mr Evans:** We are speaking now of course of the Premier's guidelines only, not of the act, because I have nothing to do with exempting anyone from the guidelines.

**Mr Sorbara:** No, but I am talking about the difficulty that the Premier might encounter.

**Hon Mr Evans:** I think I would find it difficult. I do not know how the Premier would find it, but certainly, if one has a considerable amount of assets that have been transferred, he may not suffer the same hardship as one who has probably very little and is forced to put them into a trust. What standard are you going to apply?

**Mr Sorbara:** As it turned out, my information is that since the ministers submitted, in accordance with the Members' Conflict of Interest Act, their statement of assets,



there has been no significant divestiture or reporting to you of any minister divesting of assets. Is that correct?

**Hon Mr Evans:** That is quite correct. We do not have anything to indicate there has been a substantial divestment. There have been a few who have indicated a transfer of certain assets into a trust, into a registered retirement savings plan, for example.

**Mr Sorbara:** When it was put to the Premier in question period, about two and a half weeks ago, that certain ministers and certain parliamentary assistants had not divested assets in accordance with the conflict-of-interest guidelines that he presented to Parliament on 12 December, the Premier responded that his ministers and parliamentary assistants had complied with what can only be referred to as an amendment or an addendum to the guidelines. Have you seen or do you know of any addendum to the guidelines that the Premier submitted on 12 December?

**Hon Mr Evans:** The one from 12 February?

**Mr Sorbara:** Yes, 12 February. You now have a copy of that memo from the Premier to cabinet ministers, parliamentary assistants and caucus members. The subject matter is "Conflict of Interest." Do you now have a copy of that memo?

**Hon Mr Evans:** Yes.

**Mr Sorbara:** Can you tell the committee when you first became aware that the Premier had amended his conflict-of-interest guidelines by way of a memo dated 12 February 1991?

**Hon Mr Evans:** On 17 April; I received a copy from the Liberal caucus, and on the following morning I received one from Premier Rae's office.

**Mr Sorbara:** So your first information about an amendment to the guidelines came from the Liberal caucus?

**Hon Mr Evans:** Correct.

**Mr Sorbara:** And the day after that, the Premier's office sent you a copy of the memo?

**Hon Mr Evans:** One came late in the afternoon; the other came the next morning.

**Mr Sorbara:** Have you had a chance to review this amendment to the guidelines?

**Hon Mr Evans:** I have read it.

**Mr Sorbara:** You have read the Premier's conflict-of-interest guidelines dated, I think, 12 December.

**Hon Mr Evans:** Yes, I have read that as well.

**Mr Sorbara:** Can you comment on how this addendum, in your view, modifies the requirements that are set out in the Premier's conflict-of-interest guidelines?

**Hon Mr Evans:** In the Premier's conflict-of-interest guidelines?

**Mr Sorbara:** That is to say, how does this new document from Premier Rae setting out circumstances under which ministers and parliamentary assistants do not have to sell rental property, do not have to sell RRSPs and, in some cases, do not have to sell other financial interests amends the document that was the subject of this committee originally, that is, the Premier's guidelines? Can you tell us that?

**Hon Mr Evans:** I do not think there were very many changes in it. I think he has explained that, with respect to rental properties, he does not consider rental of rooms or apartments in owner-occupied property as a conflict of interest, although ownership of rental property does pose the potential for conflict, and I assume he is ruling out any commercial rentals in that.

**Mr Sorbara:** Let's take the case, for example, of the Minister of Transportation, Ed Philip. Apparently, Mr Philip owned and continues to own a condominium at 33 Harbour Square in the city of Toronto. Under the Premier's original guidelines, would he have been required to sell that condominium or divest himself of an interest in that condominium?

**Hon Mr Evans:** Under the original one, I think he would have.

**Mr Sorbara:** Under the amendments, would the Minister of Transportation be required to sell his interest in that condominium?

**Hon Mr Evans:** Quite possibly.

**Mr Sorbara:** The Minister of Community and Social Services owns a one-eighth interest in a property in Oakville known as 1008 Falgarwood Drive, not her personal residence, and therefore a business interest. Under the initial guidelines, would she have had to sell that interest?

**Hon Mr Evans:** Yes.

**Mr Sorbara:** Under the amendment, would she be absolved from having to sell that interest?

**Hon Mr Evans:** I would think she would still be required.

**Mr Sorbara:** Still be required to sell the interest?

I am looking now at an interest of the Minister of Culture and Communications, Elaine Ziemba, who apparently still has an interest in 2264 Bloor Street West.

**Mrs Haslam:** Ms Ziemba is not the Minister of Culture and Communications.

**The Chair:** Mr Sorbara has the floor. I am sure the correction will be noted.

**Mrs Haslam:** I was just trying to correct.

**Mr Sorbara:** I am sorry. I stand corrected. The Minister of Citizenship owns an interest in 2264 Bloor Street West in Toronto. Under the guidelines, I take it that she would have had to sell that interest. She has not sold that interest and she relies on the Premier's addendum as a basis for not having to sell that interest. What is your view of that?

**Hon Mr Evans:** Is a case of hardship involved?

**Mr Sorbara:** I do not know. We have not had an explanation from the Premier.

**Hon Mr Evans:** I have no idea.

**Mr Sorbara:** Anthony Perruzza, a parliamentary assistant in the government, owns some farm land in the county of Simcoe. Under the Premier's guidelines, would he have had to divest himself of that interest, assuming no hardship?

**Hon Mr Evans:** Sorry; I did not get your question.

**Mr Sorbara:** Anthony Perruzza, a parliamentary assistant in the government, owns farm land not used as a

principal residence in the county of Simcoe. Under the Premier's guidelines, unamended, would Mr Perruzza be required to sell his interest in that farm land?

**Hon Mr Evans:** I would think so.

**Mr Sorbara:** The fact that Mr Perruzza has not sold his interest in that farm land could be explained by virtue of the amendments to the guidelines dated 12 February.

**Hon Mr Evans:** Yes.

**Mr Sorbara:** Another parliamentary assistant, Wayne Lessard, owns a rental property at 1621-1623 Church Street in Windsor. That property is not used as a principal residence or as a recreational property. We understand that Mr Lessard owns it as a rental property, has not divested of it, but were it not for the amendment would probably have to have divested of his interest in this property under the previous guidelines, absent hardship.

**Hon Mr Evans:** Correct.

1550

**Mr Sorbara:** And it would be safe to say that the fact that he has not divested of that property is based on the amendment to the guidelines dated 12 February.

**Hon Mr Evans:** Which allows for "single-family dwelling, condominium or other such dwelling" in addition to private residence.

**Mr Sorbara:** When the Premier's office sent you a copy of his memo dated 12 February, did he offer you any explanation as to why he had not submitted to you or to Parliament or the public a copy of this confidential memo?

**Hon Mr Evans:** No, he did not and I would have been surprised had he.

**Mr Sorbara:** Now why is that?

**Hon Mr Evans:** I do not expect the Premier to consult with me when he wants to make an amendment to guidelines he is proposing.

**Mr Sorbara:** But the guidelines were made public, were they not? They were tabled in Parliament.

**Hon Mr Evans:** That I am not sure of. I do not listen every day to it.

**Mr Sorbara:** I can assure you, Commissioner Evans, that they were tabled in the Legislature. I guess I am just asking your view as to whether you think this memo amended the guidelines sufficiently so that it ought to have been public knowledge, or at least made available to this committee in its consideration of the original guidelines?

**Hon Mr Evans:** I assume it was made available to the committee.

**Mr Sorbara:** Well, it was not made available to the committee. The committee became aware of this amendment in the same way that you did, through the Liberal research office.

**Hon Mr Evans:** I am not familiar with the process.

**Mr Sorbara:** Okay. I think my friend from St George-St David has some questions.

**The Chair:** Mr Chiarelli has to be recognized first.

**Mr Chiarelli:** I just have a couple of very brief questions. This particular cabinet was sworn in, I believe, on 1

October. If a new member of the executive council had properties that should be subject to divestiture or are likely to be the subject of divestiture and a matter comes before cabinet such as Bill 4 dealing with the issues between landlords and tenants, if one of those assets were a rental property, do you think that particular member of cabinet ought to declare interest or at least refrain from participating in cabinet discussions?

**Hon Mr Evans:** You are talking about under the Members' Conflict of Interest Act?

**Mr Chiarelli:** Yes.

**Hon Mr Evans:** No, I do not think so, because practically everybody is either a landlord or a tenant, all members, so I think there is an exemption under section 1, affecting a large group of people.

**Mr Chiarelli:** Under the Premier's guidelines, do you think it would be appropriate to participate in cabinet discussions?

**Hon Mr Evans:** Yes, I think it would be all right.

**Mr Chiarelli:** Thank you.

**Mr Scott:** Chief Justice, as I understand it, you run the Members' Conflict of Interest Act; you do not run the Premier's guidelines.

**Hon Mr Evans:** Correct.

**Mr Scott:** He is Chief Justice Evans for the guidelines.

**Hon Mr Evans:** That is right.

**Mr Scott:** Yes, or the executioner as I call him.

**Hon Mr Evans:** Those are your words, not mine.

**Mr Scott:** Yes. There has not been much executing going on, but that is what I call him.

The fact is that the guidelines the Premier has released do make reference to your act in one or two places.

**Hon Mr Evans:** Right.

**Mr Scott:** So they are connected in that sense. I just want to ask you some questions of fact about those connecting points and then a question about your opinion on another matter. In paragraph 16 of the guidelines it provides, "Business interests permitted by the Premier to be retained under the above paragraph"—those are non-divestible businesses—"shall be placed in a trust under section 8 of the Members' Conflict of Interest Act," and when you look at section 8 you see that it requires that the terms of the trust and various other matters be approved by you. Have I got that right?

**Hon Mr Evans:** Yes.

**Mr Scott:** Now what I want to ask you is, at any time have you been asked to approve the terms of a trust into which the assets of a minister of the crown or parliamentary assistant are to be put?

**Hon Mr Evans:** No.

**Mr Scott:** Not at all? All right. Second, paragraph 18 of the Premier's guidelines has, I believe, the following effect: It is the Premier's requirement that the monetary standard under which a gift requires reporting to the Conflict of Interest Commissioner will be reduced from the level set in the statute. Do you agree with that?



**Hon Mr Evans:** From \$200 to \$100?

**Mr Scott:** Yes.

**Hon Mr Evans:** Yes.

**Mr Scott:** What I want to ask you is, have you since 1 October received any disclosures under paragraph 18 from ministers or parliamentary assistants in this government?

**Hon Mr Evans:** Yes.

**Mr Scott:** Can you tell me or provide to me on another occasion the names of ministers or parliamentary assistants who have made that disclosure?

**Hon Mr Evans:** Certainly.

**Mr Scott:** I know your good right hand is sitting on your left hand and perhaps you can ask her to do that for me.

Third, under paragraph 29 of the Premier's guidelines, there is a provision, and I understand what it asks ministers to do, though I must confess I do not understand why. It says, "Upon appointment to the executive council or upon an assignment of new responsibilities within the executive council, ministers"—and I presume that means ministers who receive a new appointment or a new assignment; it could not mean all ministers. Do you agree with that so far?

**Hon Mr Evans:** Right.

**Mr Scott:** To continue, "ministers shall request an opinion of the conflicts commissioner under section 14 of the Members' Conflict of Interest Act." When you see section 14, again you will see why I do not understand exactly what is planned here, but I simply want to ask you a question of fact. Since 1 October four persons have either been appointed for the first time as ministers or have had newly assigned responsibilities. Those are Mr Wilson and Mr Charlton and Ms Lankin and Ms Churley. The first three, I guess, received new assignments, new responsibilities. I am sorry, no. Three were new appointments; the third, Ms Lankin, was an assignment of an additional responsibility, of a new responsibility as Minister of Health.

I want to ask you if up until today's date any of them has, as contemplated by section 29 of the Premier's guidelines, requested an opinion of you under section 14 of your act?

**Hon Mr Evans:** Three.

**Mr Scott:** Three.

**Hon Mr Evans:** Churley, Wilson and Lankin.

**Mr Scott:** Yes, all right. Thank you. Have you provided those opinions?

**Hon Mr Evans:** Whatever they asked I provided, yes. Frankly, I do not quite understand what the section means.

**Mr Scott:** I do not understand it either. If the ministers understand it or the Premier understands it, they are one up on all of us. But that is to be expected; they are big shooters and ministers.

**Hon Mr Evans:** I think there was a little difference. If you had someone who was appointed parliamentary assistant and who comes in, yes, I would explain to him in detail what the problems are that he might encounter.

**Mr Scott:** Yes, this is one of the questions of opinion. Apart from a parliamentary assistant who is moving up a notch on the greased pole, can you understand what could be intended by saying that ministers shall request an opinion

from you under section 14 when they move from one ministry to another?

**Hon Mr Evans:** No, I do not.

1600

**Mr Scott:** Just one other question, and I do not want to deal with any individual cases, because that is another matter. I would like you to look at section 24 of the guidelines. This is a question of opinion I am asking you, so I think everybody will understand the answer is your opinion, perhaps shared by your loyal executive assistant, but it is not necessarily the opinion of all the world. It is an opinion I am requesting, not a statement of fact.

It provides, "Where a minister's constituency office undertakes activities in which members normally engage..." and then it says "ministers shall take all reasonable steps to ensure that their office as minister is not used to further the interests of the constituent."

These guidelines are to clear the air, of course. I would like to know what your opinion is as to what steps a minister should take that would be characterized as reasonable steps to ensure what the section plans to ensure.

**Hon Mr Evans:** I think you have to look at the guidelines and also at section 5 of the act, which provides, "This act does not prohibit the activities in which members normally engage on behalf of constituents." So somehow or other, you have to work the two in. The fact that you may become a parliamentary assistant or a minister does not deprive you of the right to look after certain constituency activities or certain constituents, but I think you have to be very careful in how you handle them. There has to be a separation of the minister's office and the constituency office.

**Mr Scott:** What would you think would be reasonable steps taken by the minister to ensure that separation?

**Hon Mr Evans:** I think he should have very definite guidelines for his staff.

**Mr Scott:** Would you recommend that those should be in written form?

**Hon Mr Evans:** To protect himself, I think they should be, and the staff as well. It is a lot easier to have them there in writing.

**Mr Scott:** So the first thing would be written instructions to the staff. Would it be desirable to personally discuss those written instructions with the staff to assure a level of understanding?

**Hon Mr Evans:** I would think so.

**Mr Scott:** Would the instructions perhaps, if they were to be reasonable in the circumstance, contemplate the use of the minister's name in connection with material or letters?

**Hon Mr Evans:** I suppose in the minister's constituency office the correspondence goes out of there, and I take it under his name, so the office of a particular minister. I would not want someone signing my name to too many documents.

**Mr Scott:** Let me give you a personal example from my own experience. As the member between 1985 and whenever I stopped, 1990, constituents used to come to me asking me to communicate with the Ontario Municipal

Board, almost invariably words of praise, but occasionally prayers for relief. I always took the position that because that was a board that reported to the Ministry of the Attorney General and to me, I had no right, and it was improper, as a minister or indeed as a member, to carry messages to the board from my constituents.

**Hon Mr Evans:** I suspect that is a good practice, particularly if the government-appointed board happens to fall within the confines of the ministry. I would think you would stay far away from that, and your constituency office as well.

**Mr Scott:** So should the minister give instruction to his staff, bearing in mind what his cabinet portfolio is, about their relationship with agencies with which he does official business?

**Hon Mr Evans:** I would think that would be a practice.

**Mr Scott:** Should that be fairly detailed to be helpful?

**Hon Mr Evans:** I suppose that depends on your staff. If they are competent and experienced staff, probably you do not have to spell it out too often, but if it is new or inexperienced staff, yes, I would think you would have to spend a little more time with them.

**Mr Scott:** I take it it goes without saying that in respect of new staff, the burden on the minister becomes greater.

**Hon Mr Evans:** You would really have to have an orientation week, I suppose, to acquaint them with their duties and responsibilities.

**Mr Sorbara:** Chief Justice, you are carrying out an investigation now on the Minister of Community and Social Services, Zanana Akande, is that right?

**Hon Mr Evans:** Correct.

**Mr Sorbara:** Can you just tell the committee when you propose to report your findings and how you propose to report your findings, and the problems in the act with reporting the findings of an investigation undertaken by you in your capacity as commissioner?

**Hon Mr Evans:** If I start at the top, there is an investigation. It is now complete. The documents will be available tomorrow. There is no provision in the act as to how this is to be handled, so we spent a day trying to figure out something with the Speaker and the Clerk of the House, and we finally arrived at what we trust is a solution to the problem.

**Mr Sorbara:** What is that solution? Do you feel you are at liberty to report your solution, not the findings, but how you propose to report, in what form and to whom, in the government and in the Parliament?

**Hon Mr Evans:** I can tell you it will be in writing.

**Mr Sorbara:** Good. That is helpful.

**Hon Mr Evans:** Our present plan is to deliver it to the Speaker of the House in the morning, and then the leaders of the three parties, the ministers involved and the complainants will receive a copy after it is tabled—no, I am sorry—about one hour before.

**Mr Sorbara:** One hour before it is tabled. I see.

**Hon Mr Evans:** Then we will deliver a copy to the mail room for each member, and then we will also deliver copies to the press room. What we are trying to do is to

avoid disclosure prior to its being tabled. We do feel that those cabinet ministers involved, those who made the complaint, the leaders of each party, should have the material a little bit in advance.

**Mr Sorbara:** So your statutory obligation, as you decided, is to deliver a report to the Speaker and then to disseminate the information to interested parties in a fair and timely and appropriate way.

**Hon Mr Evans:** Yes. When you are at it, if you are going to amend the act, please set out a procedure; then we will have something to follow. I think we will find out tomorrow how it works.

**Mr Harnick:** My lord, in the course of that investigation you have now completed, the investigation, I gather, and I am not after any contents, but the investigation was based on the conflict guidelines and an interpretation of those guidelines.

**Hon Mr Evans:** All I deal with is the act.

**Mr Harnick:** Did the investigation involve any consideration of the guidelines?

**Hon Mr Evans:** Not by me.

**Mr Harnick:** Was there any consideration of the guidelines that you are aware of by the Premier in conjunction with your investigation under the Members' Conflict of Interest Act?

**Hon Mr Evans:** Not that I am aware of.

**Mr Harnick:** You have indicated on a couple of occasions that those guidelines are draconian. I think that was the word you used again today.

**Hon Mr Evans:** It has been bandied around a bit, but I am certain I said it.

**Mr Harnick:** Can you tell us why that is your opinion?

**Hon Mr Evans:** I think it is a very tough regulation to apply, and while I have a great respect and admiration for people like Mother Teresa and Jean Vanier and others who go down as teachers to Third World countries, who divest themselves of everything, I have a little difficulty with the general public, with people who have some measure of success in their professional life. They accumulate assets, and I am not too sure they want to turn them over to somebody else to administer. They feel they can do it themselves and, if they do turn it over to somebody else, then you would have to have a certain very strict compartment in which those assets would be put, and they should be controlled by someone whose contact with the settlor is minimal. I think the government should pay for it in that instance.

**Mr Harnick:** That is assuming they fall within an exception and can go into a trust.

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**Hon Mr Evans:** Right. I do not think too many things have to go into a trust, but there may be situations.

**Mr Harnick:** But if we follow the section, it indicates that unless you fall into an exception it is straight divestment.

**Hon Mr Evans:** You are talking now about the guidelines. Yes.



**Mr Harnick:** What effect would the implementation of section 15 of the guidelines, in your opinion, have on the system of government of this province?

**Hon Mr Evans:** I suspect a lot of people who are now in the Legislature would not be here if they knew what they were faced with at that time, a set of guidelines that strict. I think it would inhibit people from running, and I assume we want the best in the Legislature that you can get.

**Mr Harnick:** Certainly the largest cross-section of people.

**Hon Mr Evans:** The best of the cross-section.

**Mr Harnick:** All right. In terms of these guidelines, is there anything in the conflict-of-interest disclosure sections which in your opinion do not accomplish what this divestiture is supposed to accomplish? I am looking for, first of all, the weaknesses, if any, in the system of disclosure which in your opinion could be improved so that it would be as tough or as effective as the necessity to divest.

**Hon Mr Evans:** Under the guidelines, the divestment is strict. It says "any asset"—divest themselves of any asset—"liability"—everybody would like to divest themselves of liabilities, I assume—"or financial interest which causes or could appear to cause a conflict of interest." That has always bothered me a bit. What is going to cause it? Whose perception is it of what is going to cause a conflict of interest?

Then "all business interest." You would have to have a definition, I take it, of a business interest, if you own a condominium in addition to your residence, or two of them, whether that is a business. I do not see it that way. To me a business is something in which you are actively engaged, and the other is more in the line of an investment. If you had to divest yourself of an apartment you happen to have next door, or whether it is a triplex or fourplex, I would think that might cause considerable inconvenience to people. In other words, you have an apartment building next door, and it does not take you much time to have your kids out cutting the grass and painting it, removing the storm windows; it does not cause you much trouble to operate. To say you are going to have to take that and put it into a trust and pay the trustee to collect the rent, manage the building, I think is, I might say, unnecessary. I do not think it is necessary.

**Mr Harnick:** When we went through the original brief hearing period in February, we had two divergent opinions. The first opinion, from a group of former Liberal cabinet ministers, was that they could not have become cabinet ministers if this divestment guideline was in effect, or they certainly would have chosen not to become cabinet ministers under that circumstance. We had a number of current ministers who came and said everything is related to public perception, and that the reason we need divestment is based on public perception; that was the only reason people had to accept section 15 of the guidelines. Can public perception be satisfied, in your opinion, under the disclosure rules of the Members' Conflict of Interest Act?

**Hon Mr Evans:** No, I do not think you can ever satisfy an individual's perception.

**Mr Harnick:** Could you satisfy an individual's perception with divestiture?

**Hon Mr Evans:** That is very questionable, too, because you would want to know who the trustee is and what the relationship is, if any, between the trustee and the settlor. I think it is a difficult area. Public perception, what one person believes may not be true at all, but in their mind they form a conclusion when they may not have all the facts. I do not know what criteria we use. You can get some guy coming off the wall down there who objects to every cabinet minister and is going to have something to say. He has a public perception of what they are doing. He has a perception of something as going wrong, because he is not informed.

**Mr Harnick:** In your opinion, is public perception justification to make these guidelines law, including the divestment section particularly?

**Hon Mr Evans:** I do not think they are necessary, but I take it that every Premier has the right to lay down certain rules for his cabinet. That is one thing. The act applies to the cabinet and he can make whatever rules he wishes. The cabinet will comply, and if they do not comply, out they go. But when you get down to the whole government, that is, the members of the Legislature, you have to have a statute of some kind if you are going to enforce it, and that is a little different. I think they are two separate things, really. I think the conflict of interest act is for everybody and the guidelines may well be applicable for—one Premier may like that and another Premier may not.

**Mr Harnick:** Would it be your recommendation that the guidelines remain guidelines, separate and apart from the conflict of interest act?

**Hon Mr Evans:** Yes, provided that some changes might be made to the conflict of interest act. I think it needs a little overhauling, because it was a new act and there are holes in it that might be plugged up. Some of the guidelines might be used. Whether it is \$100 or \$200 on a gift does not make too much difference, as far as I am concerned. I do not think it makes too much difference to the legislators either.

**Mr Harnick:** Would it, though, be your opinion that the guidelines would be better left out of the act so that each successive Premier would have control over the guidelines that he would set for his particular executive council?

**Hon Mr Evans:** Yes.

**Mr Harnick:** In fact, that appears to be the opinion of this Premier, if you read the guidelines, because it is this Premier who makes the decisions as opposed to the conflict commissioner.

**Hon Mr Evans:** It is true.

**Mr Carr:** As part of the summary of some of the recommendations and issues, when you came before us last time, and this may be paraphrasing a little, you said:

"Neither the ministers nor their parliamentary assistants should make representation on behalf of constituents before government agencies, including the Workers' Compensation Board and the Liquor Control Board. There must be a level of non-interference by ministers and parliamentary

assistants. Instead, the constituency office should be making those representations, but without waving a flag about the minister's or the parliamentary assistant's position."

What did you mean by "waving a flag?"

**Hon Mr Evans:** I think most ministers feel they still have constituents out there and they want to keep them for the next election, so they feel they have to do something in the interests of those particular people. But if it is the Minister of Labour, I do not think his constituency office should even be involved in discussing matters with the Workers' Compensation Board. That does not mean that the minister of something else could not have his constituency office acting for someone before the board.

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**Mr Carr:** So of course the Solicitor General should not be dealing with anybody in justice. That would be an example you could use as well.

**Hon Mr Evans:** The police departments?

**Mr Carr:** Yes.

**Hon Mr Evans:** That is right.

**Mr Carr:** And all justices of the peace, contacting a judge like yourself, that should be a no-no.

**Hon Mr Evans:** I do not think any minister or parliamentary assistant should be contacting a judge at any level of the judiciary.

**Mr Carr:** When the Premier came before us, what he said is that they should be allowed to do normal constituency work.

**Hon Mr Evans:** That is true.

**Mr Carr:** But in this case, in other words, what we are talking about is not whether we have waved a red flag because of the signature on there, but that there should be no contact whatsoever between any member of the—

**Hon Mr Evans:** That is just my opinion, whether it should happen. Section 5 does not prohibit the activities in which members normally engage on behalf of their constituents, but I would think that with a minister with a certain portfolio, and some administrative body appointed by the Ontario Legislature falls within the jurisdiction of your department, I do not think you, your parliamentary assistant or your constituency office should be near it.

**Mr Carr:** So even if it was a situation where you used, say, constituency letterhead and it just said, as an example, "MPP for Cambridge," and it did not have anything to do with the Solicitor General, that still should not be sent out to—

**Hon Mr Evans:** I think it is hard to divorce. If I am sitting there and I am involved with the Workers' Compensation Board and I get a letter on the letterhead of a minister, I might think twice about it. I did not get many letters when I was a judge.

**Mr Carr:** You were not a judge when this government was in power, though.

My next question deals with the letter that you say you did not receive until 17 April. You were first informed about it by, you said, the Liberal Party.

**Hon Mr Evans:** Somebody from the Liberal Party sent it to me, yes.

**Mr Carr:** What was the date again on the—

**Hon Mr Evans:** As I recall, the late afternoon of 17 April.

**Mr Carr:** The actual date of the letter was what date?

**Hon Mr Evans:** That is 12 February. That arrived by fax machine.

**Mr Carr:** So you got a 12 February letter on 17 April.

**Hon Mr Evans:** Right.

**Mr Carr:** Did you inquire with either the Premier or anybody in his office as to why that occurred?

**Hon Mr Evans:** No. I do not think I have any right to question the Premier on how and why he does things.

**Mr Carr:** So when something shows up, you just take it and file it.

**Hon Mr Evans:** I read it and file it.

**Mr Carr:** Is this the normal contact or do you have a formal way of going through to the Premier's office? Is this normal practice to receive things later or is this the only occasion?

**Hon Mr Evans:** I receive packages from many members and from the Premier's office as well, but there is no particular routine set up whereby he would advise me.

**Mr Carr:** We have talked a great deal about perception, and the Attorney General, when he came in, said that it is really not a matter of law but of public perception. As somebody who has been involved in the law and knowing what has gone on over the last little while—and I think you said that perception is in the eyes of the beholder, or words to that effect—I was wondering, specifically with yourself, what your perception is of what has happened over the past little while, what you would categorize as the perception of the conflict-of-interest guidelines. Do you think we are better off now than we were before this Premier's guidelines were introduced, or do you think the perception is now worse as a result of the activity?

**Hon Mr Evans:** It is pretty hard for me to say what the public perception is. I can only say what my own is.

**Mr Carr:** No, yours.

**Hon Mr Evans:** I do not think it is much different. I am not a great believer in this public perception. You have probably guessed that by now.

**Mr Carr:** But as a judge, you do not have any opinions of what the perception is, no personal feelings of where we are at now with this? Surely as the person who has to administer this, and I know as a judge you sometimes have to leave things aside, in your office you must have some idea of what the perceptions are out there, whether as a result of your work things are getting better or are getting worse. Just your personal opinion.

**Hon Mr Evans:** I think judging by what I read in the papers, the public perception of legislators is like the public perception of lawyers and accountants—it is not high. We rank above used car dealers, but not too far. So it is very hard for me to say what the public perception is.



I think the public perception is wrong. I have a better perception, I think, of members of the Legislature than some guy out on the street who does not know any of them, has not had any dealings with them. In my view, they are a very good group; somebody out on the street may not think so, because he does not know them. I do not know how you can form an opinion of somebody unless you know the facts of the situation and know him and know something about him or you have facts upon which you can judge him.

That is how we used to think a jury worked anyway. When you get 75 or 100 people called in and then you pick 12 out and send the rest home, you expect that those 12 people are going to be reasonable, well-informed, non-partisan and intelligent people who will come up with a proper decision, and I think in most cases they do. You are able to present evidence to them, they know the facts, and you tell them what the law is, or what you believe it is anyway.

**Mr Carr:** As a result of having taken a long, hard look at this, if you could sum it up in order to change the perception, what would you recommend to the Premier that he do now as a result of this? We have come in and attempted to try and clean up and make the perception better, and quite frankly, I think we have taken one step forward and about nine steps back. What would your recommendations be if the Premier asked you?

**Hon Mr Evans:** I am rather hesitant to advise the Premier of anything. I do not really think that is my function. I think I know what he was trying to do: to improve the perception, or what he felt was the public perception. I do not think the guidelines are much of an improvement over the act. There may be a few things in there that should be worked into the act. I think the act needs a little revision and I think you could come up with the same thing without any guidelines whatsoever.

**Mr Carr:** You have not been asked personally for any of your thoughts by the Premier in light of what has happened over the last little while? You have not been asked to sit down and go over it?

**Hon Mr Evans:** No.

**Mr Carr:** One final question, if I could. When we talked about going way back, there was some discussion about who should be the final judge over the circumstances. The Premier, at the time he came in, said that he is the elected representative and so he is the final judge, because people can judge him. There was quite a bit of actual debate with some of the cabinet ministers who came before us, the Minister of Natural Resources and the Chairman of the Management Board of Cabinet. I think they struggled a little bit when we asked them that question. In light of what has happened over the last little while, do you think it should be changed to make you the final authority and judge over it, or do you still think the elected Premier, regardless of political stripe, should be?

**Hon Mr Evans:** I think if you have a piece of legislation, you should appoint somebody, as you have done, and that person should be given the authority to reach a conclusion, a decision on it. But if you are going to have

guidelines, I do not think that is my function. I think I only act pursuant to a piece of legislation.

**Mr Carr:** What if, for example, the Premier comes to you and you give a recommendation; do you think that recommendation should be made public in all cases? The Premier then would have the authority to disagree and say: "No, I disagree with Judge Evans. This person is still going to remain." Do you think that should happen, or do you think it should be left to the discretion of the Premier, sort of quietly?

**Hon Mr Evans:** Are we speaking now about the guidelines?

**Mr Carr:** Yes.

**Hon Mr Evans:** I think if the Premier wants to make a decision, he can fire any cabinet minister he wants; he does not have to ask me.

**Mr Carr:** But if you were doing any type of investigation, do you think that investigation should be made public?

**Hon Mr Evans:** If I make an investigation, it is public. There is a provision in the type, almost, of request that is made. If one goes to—what am I looking at now?—sections 15 and 16, a member can make a request or lodge a complaint and I will make an investigation. That is normally just an informal investigation, but it can be under the Public Inquiries Act. In that situation, I go to the Legislative Assembly, by a resolution under subsection 15(2), and give an opinion, and then the executive council requests an opinion. If I receive a request under section 15, I conduct an inquiry, and then where the request for an opinion is made under subsection 15(1) or 15(2), the commissioner shall report to the Speaker and he lays it then before the assembly. Where the request for the opinion is under subsection 3, which is the executive council, then the commissioner reports to the clerk of the executive council. I do not know what they do with it, and it is not my problem.

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**Mr Carr:** With the circumstances that we have had over the last little while, and speaking maybe again about public perception, the perception is that this whole process is very difficult. The people who have difficulty complying with the circumstances—we have some who did not, for various reasons, and we have some who have complied, some who have some extensions, whatever. Is the process that complicated? I look at it and say it should not have been as complicated and as confusing as it is. Would you agree with that? Is there something we are doing wrong that has made it so absolutely confusing for everybody?

**Hon Mr Evans:** I think people get carried away with public perception, I really do.

**Mr Carr:** In other words, what has gone on over the last little while is not abnormal to you. The circumstances of some people complying with the guidelines and other people taking a little bit longer, you see no problem with this. This will probably be a standard way of operating, then.

**Hon Mr Evans:** Yes, and I think when you are doing an amendment to the act, you should give a little discretion to the commissioner to do certain things.

**Mr Harnick:** You made reference to the fact that you would not mind seeing some of these guidelines as part of the conflict of interest act. Rather than waste your time to go through it and explain it, is there any way you could provide the committee with a summary of those guidelines that you think should be incorporated into the conflict of interest act?

**Hon Mr Evans:** Yes, we could do that. I could do that.

**Mr Harnick:** I think that would be helpful for us.

**Mr Fletcher:** Thank you for coming back, Judge Evans. I just have a few questions. Are the Premier's guidelines right now tougher than the previous guidelines? Do you feel they are tougher?

**Hon Mr Evans:** Yes, I think they are a little strict.

**Mr Fletcher:** Do you think they are too tough to try and enforce?

**Hon Mr Evans:** No; that is, if we can get on the same field.

**Mr Fletcher:** Okay.

**Hon Mr Evans:** Which ones are you talking about?

**Mr Fletcher:** The Premier's guidelines now. Are they tougher than the previous guidelines?

**Hon Mr Evans:** That were put in by the previous administration?

**Mr Fletcher:** By the previous administration, yes.

**Hon Mr Evans:** I would say they are. I do not know too much about the other guidelines because I did not have anything to do with them.

**Mr Fletcher:** Do you think they are too tough to enforce?

**Hon Mr Evans:** The present ones?

**Mr Fletcher:** Yes.

**Hon Mr Evans:** I think they would be difficult. I think it would keep the Premier busy.

**Mr Fletcher:** And yourself?

**Hon Mr Evans:** I do not have anything to do with the guidelines.

**Mr Fletcher:** That is right. I was just wondering. When you were here last time, you made comments about when things were being put into blind trusts. One of the comments you made was that ministers always know what is in the trusts. When I look at the Peterson guidelines—

**Hon Mr Evans:** I never saw them.

**Mr Fletcher:** Did you not?

**Hon Mr Evans:** No.

**Mr Fletcher:** Well, let me just read a part of what was okay to do, and this is if a company or a holding was put into a blind trust. "It shall be the responsibility of the trustee to ensure that if any matter affecting the interests comes before the ministry for which that minister is responsible, officials in the Premier's office are advised so that a colleague of the minister can be appointed to act for the ministry concerned for purposes of dealing with the matter." In other words, if there were a contracts with the ministry for which there was a minister who had a holding—

**Hon Mr Evans:** That is similar to the provision in the act.

**Mr Fletcher:** Going back to your other statement about, "Everyone knows what is in a trust, even the minister who is holding it," the conflict can still be there.

**Hon Mr Evans:** That is why I say they called it a blind trust and nobody liked that term, so then they called it a management trust, but it did not really change it. If you have assets and you turn them over to a trustee, you know what is in the trust.

**Mr Fletcher:** Right.

**Hon Mr Evans:** If the trustee sells anything in there, then he has to report to you and to the commissioner, so you still know what is in there. If you are worrying about the person voting because he might benefit himself, he still knows what is in there. The difficulty is that nobody else knows what is in there.

**Mr Fletcher:** I think that is one of the reasons the present Premier is trying for the divestment, so that there will not be that perception of conflict.

**Hon Mr Evans:** I do not see anything in the guidelines that says, if there is a divestiture, then there are certain things you cannot divest yourself of. It is understood the guidelines provide for that, and if there is going to be a hardship, so where are you with those assets? They are not in a trust. You still have them.

I think there should also be a provision, if you are going to amend the act, which I hope you will, to somehow or other provide for notification to the commissioner if there is any substantial change in assets. I have told all of you, and you will recall, as you came in, after going through your disclosure form, if you had any particular substantial change to please let me know. Most of you have done so. If you did not tell me I would not know, but otherwise nobody would know until the next disclosure, which is several months down the road, a year from your first one.

**Mr Fletcher:** The present Premier's guidelines are just guidelines. You are not acting under those guidelines right now. Are we?

**Hon Mr Evans:** Are you acting under the guidelines?

**Mr Fletcher:** I know I am.

**Hon Mr Evans:** The parliamentary assistants and the members of the executive are.

**Mr Fletcher:** Right, but no other members are acting under these guidelines. Right, that is what I thought. If the Premier wished to amend the guidelines, that is up to the Premier. Is that correct?

**Hon Mr Evans:** As far as I am concerned, sure.

**Mr Fletcher:** I thought so.

**Hon Mr Evans:** It is whatever he can get his—

**The Chair:** We seem to be speaking very sotto voce, and I am wondering if it is possible for members to restrain their conversations so that we can all hear the testimony.

**Hon Mr Evans:** If the questions were placed a little louder—it must be my age or a bad day or something, I am having a little trouble hearing. When I notice these people on the question period, they seem to be much louder.



**The Chair:** They do.

**Mr Sorbara:** Certainly not the Chair of the committee.

**The Chair:** There is probably a great deal of respect for yourself, Commissioner.

**Mr Winninger:** Some of us need no microphones. Chief Justice, when Mr Harnick asked you if you agreed that these guidelines were draconian, you gave what I thought to be a restrained response. You suggested that it may in fact deter the best and the brightest from seeking public office.

You have probably read over the exception in paragraph 15 of the guidelines several times. I would ask you whether you agree with me that the wording of that exception, that is, "where...the interest has been fully disclosed, that undue hardship would be created by divestment, that retaining the interest is not inconsistent with the public interest and that the minister has given appropriate undertakings to avoid a conflict in respect of the interest," goes a considerable way towards taking the sting out of the guidelines.

**Hon Mr Evans:** It would.

**Mr Winninger:** And that perhaps the best and the brightest might not be deterred from seeking public office if they knew that, if divestment were unjust under the particular circumstances—

**Mr Harnick:** Only if they had a side deal with the Premier-to-be beforehand.

**Hon Mr Evans:** I take it when you are running for office you do not know who is going to win, who is going to be the Premier. You do not know whether you are going to be in cabinet, you do not know whether that particular Premier wants everybody like Ivory Soap, 99 44/100% pure, or just what you are going to have. So how are you going to know when you are down there? If somebody is asking you to become interested in running as a candidate in the election, how do you know what the Premier is going to believe or do? He may change his mind, and then you may find yourself in the unhappy position that you come up and you want to retain certain things and the Premier says, "I don't see any case of undue hardship here." You are then faced with a problem. You either do not accept the cabinet position or parliamentary assistant position or you divest.

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**Mr Winninger:** You agree then that it is a matter of discretion for the Premier of the time as to whether these circumstances are just or not?

**Hon Mr Evans:** That is true. Another thing is, though, when you are dealing with that, it talks about the "appropriate undertakings." "The minister has given appropriate undertakings to avoid a conflict in respect of that interest." I am not sure just how that is going to be worked out, that you are going to give an undertaking to the Premier that you will not vote with respect to these assets that you hold.

**Mr Winninger:** I do not have the answer to that, but I do have a question for you. There may be circumstances in fact where perhaps it is an ill time to sell some real estate holdings or it is a bad time to divest a business, and yet

with an undertaking that the particular member will not indulge in any potentially conflictual activities, that minister might be allowed to continue to hold that real property or that business until such time as the market is better to divest it.

**Hon Mr Evans:** That might work for Minister A, but if Minister B feels he is in a similar position and he is not granted that privilege, I would think that would cause a little ruckus in cabinet.

**Mr Winninger:** Finally, though, you would agree with me that there is scope for that kind of exception under the broad language of this exemption in the guideline and that discretion can be exercised. The Premier is not binding his or her hands in setting forth these guidelines when there is a broad exception clause incorporated into the guidelines.

**Hon Mr Evans:** When you look at clause 15 of the guidelines, "Ministers are required to divest themselves of (a) any asset, liability or financial interest which causes or could appear to cause a conflict of interest"—could appear to whom? I take it it must be the Premier—and then, "(b) all business interests." What are business interests? I think you would have to have some definition of that. Is the holding of one piece of property or an investment building carrying on a business? I think that is one of the things that would have to be ironed out.

**Mr Winninger:** So if I hear you correctly, you would like to see some kind of inclusion after the word "appear" to indicate to whom the appearance of conflict would be?

**Hon Mr Evans:** When you say "or could appear to cause," that means, again, that is a public or a private perception, whatever it happens to be. Is the private perception the Premier's perception or whose is it, or do you need it in there at all? I would think "a financial interest which causes a conflict of interest."

**Mr Winninger:** And further, you would like to see "business interest" defined.

**Hon Mr Evans:** I would. I think there is a difference between a business interest and an investment. What is your main business and occupation? A lawyer, for instance, has a couple of buildings that are rented and one is commercial and he may have an office and he rents it and it may have a couple of apartments upstairs. I do not look upon that as, and I do not think an ordinary definition means that is a business as opposed to your normal business of being a lawyer. That is an investment, in my book. A business is a shoe store or something you actively engage in.

**Mr Mills:** Thank you, Chief Justice Evans. I am very pleased to have you here this afternoon and to listen to your comments. I might add, your presence here has instilled a sense of behaviour in this committee that I have not seen for many, many weeks. We all seem to be very respectful and subdued.

**Hon Mr Evans:** Maybe they think I have the powers of contempt.

**Mr Mills:** I think so, because some of the gents here really do not interrupt. It is a wonderful day today in our behaviour, our decorum.

**Mr Sorbara:** Where is this line of questions leading?

**Mr Mills:** We are coming to that. Lots of the questions that I had intended to ask I appreciate now are going to be answered through Charles's request that you are going to come back to us with some recommendations as to how you see this to be, so I am not going to take up time to ask all those questions.

I have a couple of points. We had a Mr Sweeney here and he said that in his tenure as a minister he went through eight parliamentary assistants. Being a parliamentary assistant, I have some empathy with what he was saying. I know that a role as a PA is precarious in that we could be come and gone, but I suppose the same could be said for ministers in what is going on now. Nevertheless, do you feel that as parliamentary assistants we should be subjected to the same guidelines as a cabinet minister?

The reason I ask that is that we have Mrs Mathysen here. We came into the government and she sort of suddenly became a parliamentary assistant. She has not had that opportunity, if she had any divestment to do, and I am just wondering, sir, do you see some benefit or any benefit at all in lumping together what a parliamentary assistant should do and what a cabinet minister should do? In my experience so far, we do not seem to have that knowledge of all that goes on that a cabinet minister would and I am just wondering, does that make sense to you?

**Hon Mr Evans:** I understand the life of a parliamentary assistant in many other jurisdictions is a pretty limited one. You may be in and out, the theory being, I believe, in the federal House that they move them around so that they will all get experience. Therefore potential cabinet ministers become parliamentary assistants and then they move on, either to become another parliamentary assistant or back where they came from, and they may be recycled a year or so later.

I myself think there is a difference between cabinet ministers and parliamentary assistants. I think of the responsibility. It depends, I suppose. I have heard this, not in this Parliament but in others, and some parliamentary assistants I have known have said: "The cabinet minister paid absolutely no attention to me. I might as well have gone home." With others, the parliamentary assistant was given considerable responsibility by the minister. So I take it the responsibility as a parliamentary assistant depends upon the rapport which he has with his cabinet minister. With some it is good, some it is terrible, some it is excellent.

I think there should be a distinction, yes.

**Mr Mills:** So in your recommendations, would that be one area that you might address?

**Hon Mr Evans:** I would think that is one area I would speak on.

**Mr Mills:** Another question I would like to ask is about the role of the parliamentary assistant in the constituency office. I see here, if I can just read it, "They shall not normally engage on behalf of constituents in activities in which their office is used to further that interest." Notwithstanding the fact that there are certain rules and regulations that one would automatically sort of recognize, how can you represent people when somebody comes in there and asks about a problem that is contingent on the ministry that you work for? What would you do? Would you suggest,

"Could I,"—and I have to serve my constituents—"advise the people who work for me of certain guidelines," and then, "Okay, you act as the constituency assistant in that matter"? That does not force my constituent to go somewhere else and seek some advice just because I happen to be with the Solicitor General.

**Hon Mr Evans:** But I think the minister pays a price in becoming a minister as far as his constituency office is concerned. I think the same applies to a parliamentary assistant. I think if I had that situation of somebody coming in, and say you are the Minister of Labour; somebody comes in who has a complaint to make about the Workers' Compensation Board. I think you would be wise to send it over to somebody else, not handle it yourself.

**Mr Mills:** I see.

**Hon Mr Evans:** That is safer, because I do not think you can really separate the minister from the constituency office, and I have problems separating the parliamentary assistant from the constituency office.

1650

**Mrs Mathysen:** I am delighted to see you again, Judge. I would like to follow up on what Mr Mills said and assure you that my poverty is such that we do not have to worry about a thing with regard to my recent change of job.

I would also like to continue with a question that Mr Mills raised regarding this whole problem as it pertains to a member by virtue of the fact that he or she is a PA or a minister, not being able to effectively represent constituents and get back to some of our current problems. Would you recommend that it might be a good thing to include in these guidelines another paragraph indicating that a minister or a PA should indicate in writing to a constituency staff member what is and is not permissible? Would something concrete like that in the guidelines be a good idea?

**Hon Mr Evans:** Yes, I think they should write that out, put it out. The point is there are not that many, as I understand, in a constituency office. You may have two or three, I am not sure, but I think you should write it out and discuss it with them, make sure they understand it and hope for the best, hope that they will understand. If I were doing it, I would have my regulations set up and formally written out. I would have a discussion with all the constituency office staff members. I would have them sign it, so they could at least say they heard about it anyway. I do not know how much protection it would be for you if something went wrong, but I think it would be some.

**Mrs Mathysen:** It would at least provide some clarity, some absolute clarity.

You were talking before about trusts. How long does it take to set up a trust? If I, for example, needed to set up a trust, how long would it take me to do that?

**Hon Mr Evans:** Let's assume that you have a bunch of Treasury bills and bonds and stuff like that. It is very easy. As long as you do not have to pay for it, or somebody is going to pay for it, you can go down to any trust company and it will receive you with open arms. That is a very quick method of doing it. If you had to set up a trust involving a bunch of real estate and shares in corporations,



or partnerships in which you have an interest, that would take longer. You may have some difficulty in finding people who want to take it over, depending upon what the situation is, because if you have a very limited interest in a development company or something like that, your trustee may not have the same right to demand, and maybe you do not have very many rights to demand, where the company is going, what its projects are for next year and things of that nature, because it will say: "That's not the business of the shareholders. We have an executive. If you're not on the board of directors, then it's not your business." The trustee would be in a similar position; he could not get that information. But timewise, in ordinary affairs, it does not take long.

Then of course we have to get the approval by the commissioner of the trustees. That is just to make sure that it is at arm's length, that it is not your cousin or your brother or somebody like that, or a partner in the law firm. If you are going to have a trust, you have to have a real barrier between the member and the trustee.

**Mrs Mathysen:** What is the current way that ministers or PAs report the gifts that they receive? Do they report each gift individually immediately?

**Hon Mr Evans:** Yes. I think that is best. It is not provided for, but we would like to set up a register with Mr DesRosiers, probably set something up of that kind so that if gifts are made, then they are reported to me. I, in turn, would report to him, but at least we keep it in our office anyway. But we would like them to report as the gifts are received. Some like to report them a long time afterwards, and sometimes that is all right, but you get a call sometimes that somebody has some tickets to go to a dinner and that has always been a bit of a problem with me, to find out what is the value of a ticket. It is \$300, but you know that the person who gives you the ticket is getting an income tax exemption of \$200, for example, so what is the value to you? It is probably \$100.

**Mr Mills:** I would just like to follow up with a comment about the guidelines for our constituency assistants around this conflict of interest. I can remember back in one of my former lives, when I was in the military, we had a book called the SOPs, Standard Operating Procedures. You were given that when you came on stream. You sat down and you read it and at the end, you signed it. After that, if you got in trouble, they would say, "Did you read the SOPs?" You would say, "Yes." "Did you sign it?" "Yes." "Well, you're on your own."

I am just wondering, along those lines, if perhaps to avoid any problems with this in the future about staff members who seem to have misunderstood a little, that might be a good policy, to have some standard operating procedures in place for everybody who works for members of Parliament so that they know where they are coming exactly. Do you see that as a possibility?

**Hon Mr Evans:** I think that would be a good idea.

**Mr Mills:** I think so.

**Hon Mr Evans:** It would probably save a lot of courts martial.

**The Chair:** Mr Morrow, you have time for only one question. Then to Mr Rizzo and then back to the opposition caucus.

**Mr Morrow:** Does the 12 February clarification of the Premier's conflict-of-interest guidelines in any way compromise the previous guidelines?

**Hon Mr Evans:** No, I think it makes it a little easier in some respects. It is a little more detailed; I guess that is about the answer I would have to give you.

**Mr H. O'Neil:** I would just also like to thank the Chief Justice for coming today. Having had the privilege of being a member for almost 16 years and a member of cabinet for five years, I can tell you that I have had to go to both Mr Aird and to the Chief Justice on several occasions for advice over my five years in cabinet. As likely many of you have found, and as I have found, I could always sit down with both of these gentlemen and ask for advice. I always got what I felt was good advice. I guess it sometimes is the system that I do not totally agree with; I do not think the Chief Justice does either and I do not think Mr Aird did.

The comments that I want to make today are personal comments, but I feel very strongly about them; that is, I guess you know you come into something like this, and if during your life you have been successful in accumulating, whether it may be properties or companies or whatever it may be, if you are lucky—and I feel in many ways that I have been. But in many ways, having gone into cabinet, because I had some of these assets, I had problems and hardships presented, not only monetarily but other things that caused me problems. Mr Chief Justice, you have referred to some of these. I think Mr Rae and whoever has been advising him have gotten some of his members and some of the cabinet ministers into some problems, because maybe before these decisions were made and these guidelines were drawn up, they should have sat down with somebody like the Chief Justice or Mr Aird or people who have had experience, to know what some of the problems they have come up against were. Some more good, concrete advice could have been given to such people as the Premier before he brought some of these guidelines in.

1700

I think there have to be stringent guidelines in relation to certain parts of things that people may own. If they are stocks, I personally think they should divest those stocks, but I do not think there should have to be divestments of companies or divestment of properties. I think they have to be placed in a strong management trust with people who are going to look after it. But I think one thing the Premier and some of his advisers have not realized is that sometimes being in political life can be very short-lived. You could be a cabinet minister or parliamentary assistant for six months or a year and you are going to have to divest all these things. Then how do you go back and buy back a property that you had to sell during the time when you were not going to get any kind of the money? You might only be in for one term and have to sell a company, and then what do you have to go back to when you get out of politics?

I think these guidelines the Premier has drawn up are too stringent and they really are too hard on the people. I mean, we are asked to give up enough in public service, without giving up many of the things the Premier has asked for in those guidelines. I am not part of the committee, but I feel so strongly about it that I wanted to come today and say a few words. I feel that this committee has to look into a lot of these problems that have been encountered and I think you have to listen to a lot of the advice that the Chief Justice could give you pertaining to many of these areas here.

I think you will not get people if they really think about it. Sure, as I think the Chief Justice mentioned, you run today and whoever the Premier is, whatever party, he appoints you to the cabinet or as a parliamentary assistant right away. You find that you have to divest yourself of everything you have worked all your life for. I think it certainly presents a lot of problems and I just do not believe in total divestment. I believe in a strong management trust and other strong guidelines.

I should also mention that you mentioned a yearly update. Again, I always found that I could sit down with the Chief Justice and he would bring this up-to-date if something happened during the year, sometimes asking for advice. I always found that advice was forthcoming, and whether you liked it or not, you got the advice as to what the Chief Justice thought should be done.

Also, Mr Chief Justice, you mentioned about putting things in trust. I can tell you that, as one person, I found that there were certain trust companies that would not handle a management trust or a trust of any kind, knowing what the precarious situation of a minister or a parliamentary assistant might be and what could happen, as has happened in the Legislature over the last short while or happened to us when we were a government. They just do not want to be involved; they do not want any bad publicity. So this presents a problem.

There are other problems. I can remember the first time that I went in, as part of this, looking at a management trust. I think that my accounting fees and my legal fees amounted to somewhere close to \$6,000 or \$7,000, having the accountants and the lawyers look at putting together a management trust so that I would not get myself into problems. That presents another problem. Sure, people can say, "If you've got a certain amount, you can afford to pay it," but I do not think any minister or any parliamentary assistant should be penalized for having to do some of that. Again, these are my own personal feelings. I do not think it is the party position, but I feel very, very strongly about it.

I do not mean this in a detrimental way in speaking about NDP members, but you only have four or five where we get into certain assets and things like that. But some day, if you form the government again or in the future, you are going to have some people and you want to get a diversification of people who run for it, not to say we do not have now. But as I say, I just feel these guidelines the Premier has brought in can work to be very detrimental to good people wanting to put their names forth and run as members.

I have likely said enough on this now, but again I reiterate, Chief Justice, I know, not only for myself, the assistance you have been to us in the past, and many of the new members in the new government appreciate this.

**Hon Mr Evans:** Thank you. I should point out that under the federal tax, which has been up and down like a yo-yo—it got second reading, but that is as far as it went—there was a provision in there that the government would pay the expenses of the trustee. The setting up of a trust was a payment that is paid by the government, according to the act. The bill has never been passed, proclaimed or anything else.

**Mr Chiarelli:** I have a couple of process questions in terms of executing provisions of the act starting with section 15, which refers to questions that are referred to the commissioner for opinion.

There are three subsections. Subsection 1 is a reference by a member, subsection 2 is a reference by resolution of the Legislative Assembly and subsection 3 is a reference by the executive council. I am concerned about the particular report you will be having tabled tomorrow. Could you tell us under which subsection the reference was made to you?

**Hon Mr Evans:** Subsection 1.

**Mr Chiarelli:** If it was made to you under subsection 1, then I take it that when we look at the question of your inquiry, section 16 covers how that may take place. Section 16(2) says, "Where the request for an opinion is made under subsection 15(1) or (2), the commissioner may elect to exercise the powers of a commission under parts I and II of the Public Inquiries Act, in which case those parts apply to the inquiry as if it were an inquiry under that act." Can you tell us whether you elected to do the inquiry under the Public Inquiries Act?

**Hon Mr Evans:** I did not.

**Mr Chiarelli:** That leads me to ask about the procedure and the process of your report. Section 17 deals with penalties and recommendations you might make: "Where the commissioner conducts an inquiry under parts I and II of the Public Inquiries Act for the purposes of subsection 15(1) or (2) and finds that the member has contravened" certain named sections, "the commissioner may recommend in the report that is laid before the assembly, (a) that the member be reprimanded; (b) that the member's seat be declared vacant," etc.

Not having made your inquiry under the Public Inquiries Act, do you feel you have any authority to make a recommendation to the assembly?

**Hon Mr Evans:** No, I have not and I will not be making one.

**Mr Chiarelli:** Then what would be the general mandate that you as a commissioner would have under subsection 15(1) or (2) when you are asked for an opinion?

**Hon Mr Evans:** As to whether I would have an inquiry under the Public Inquiries Act or just an informal one?

**Mr Chiarelli:** What do you consider the general mandate of the reference? You will be filing a report. What will you be reporting back to the Legislature?



**Hon Mr Evans:** Factual findings and my opinion on those findings.

**Mr Chiarelli:** If I can go back to section 15, when a reference is made to you or to the commissioner for the time being, under subsections 15(1), (2) or (3), is it your practice or is there any regulation or procedure which indicates whether that request should be made available or is available to the public?

**Hon Mr Evans:** Under subsection 1 it goes back to the House; under 2 to the Legislative Assembly, then to the Speaker—1 and 2 go to the Speaker, and the other one goes to the clerk of the executive council.

1710

**Mr Chiarelli:** I am not talking about your report. I am saying that if you receive a request in writing from a member either under subsection 15(1) by resolution by the Legislature—obviously that would be public—or under subsection 15(3) where the executive council makes a report, is the request to you under subsections 15(1) or 15(3) available to the public?

**Hon Mr Evans:** I do not believe so.

**Mr Chiarelli:** You do not think so?

**Hon Mr Evans:** Not under subsection 15(3), but under subsection 15(1).

**Mr Chiarelli:** Under subsection 15(3), if the executive council made the request indicated in subsection 15(3), you do not think that would be made available to the public?

**Hon Mr Evans:** That goes to the clerk of the executive council and that is the end of it as far as I am concerned.

**Mr Chiarelli:** Is the request that has been made under subsection 15(1) available to the public at the present time?

**Hon Mr Evans:** Yes.

**Mr Chiarelli:** Thank you very much.

**Mr Sorbara:** Commissioner Evans, in my six years' experience in this place, having both sat in an executive council and watched the workings of an executive council in two parliaments, my own experience is that I have not seen an elected representative who has used his office to further his private interests. In virtually every single case, if not in absolutely every single case, the 260 MPPs who have made up the two parliaments are here to serve the public interests and set aside their private interests and take that approach to their work, notwithstanding the existence of the Members' Conflict of Interest Act or these new guidelines of the Premier.

You have been doing your job for about three and a half or four years. Is my experience similar to your experience?

**Hon Mr Evans:** I would agree. I take the position that everybody who came through that doorway into my office to file a report and go to confession was honest until I find anything different. I have not found anything different so far. I believe they really are trying to do their job in the interests of the public.

**Mr Sorbara:** My own view is that the presence of these new guidelines from the Premier is not going to make much of a difference in that regard, primarily because MPPs are basically honest people who are here not

to make themselves personally richer or more influential in their communities in a private sense.

**Hon Mr Evans:** I believe that. If I may express an opinion, I think the guidelines were for public perception more than anything else.

**Mr Sorbara:** Yet here we have a news release of today where yet another MPP has resigned or been forced to resign. Here is the announcement from the Office of the Premier. Dr Bob Frankford has now resigned as parliamentary assistant to the Minister of Health because he did not sell his business interest in a health service organization. That is really regrettable because I think Bob Frankford is an honest MPP who could have continued to serve.

By the way, I want to say that I am very troubled with what the member for London South said earlier in questioning. He referred to section 15 of the guidelines as a broad exception from the requirement to divest. I want to say that the Premier cannot have it both ways. The Premier cannot have the opportunity to stand up and say these are the toughest guidelines that have ever been brought before any Parliament and then have the MPP for London South say there is a broad exception from the requirement to divest, and there is yet another secret memo that says, "Even there you don't have to divest."

Paul Wessinger reported to you and you reported to the House that he owned shares in—I am going to give you a list—BCE Inc, the Bank of Montreal, the Bank of Nova Scotia, Coca-Cola Beverages, Mackenzie Financial Corp, Laidlaw-G, Canadian Occidental Petroleum Ltd, Noran Energy Resources Ltd, TR Capital Units and something called Newmac. My question to the commissioner is, has Mr Wessinger reported that he has divested himself of these interests?

**Hon Mr Evans:** To me?

**Mr Sorbara:** Yes.

**Hon Mr Evans:** No.

**Mr Sorbara:** As far as you are concerned, Mr Wessinger still owns these shares in these public companies?

**Hon Mr Evans:** As far as I am aware.

**Mr Sorbara:** In other words, he reported that he owns these interests and he has not changed the declaration he made to you.

**Hon Mr Evans:** Yes.

**Mr Sorbara:** Is it your view that Mr Wessinger would be required to sell his shares in these companies under the conflict-of-interest guidelines that are the subject of this committee's hearings?

**Hon Mr Evans:** Unless he can prove there was a hardship or something of that nature.

**Mr Sorbara:** As you read the guidelines they require the Premier to make a public statement if he has made an exemption, do they not?

**Hon Mr Evans:** That is what it requires.

**Mr Sorbara:** You have not been made aware of any public statement in that regard. You have not been made aware of any exemption or any exception?

**Hon Mr Evans:** No, I have not. I think it should not be required to notify me.

**Mr Sorbara:** No, I appreciate that. There is no requirement to notify you, but you have not been made aware, through a press release or through a private communication from the Premier's office, that these shares had been sold.

**Hon Mr Evans:** I have not seen it in the Sun, the Globe and Mail or the Star.

**Mr Sorbara:** Our problem is that we have not seen it either. The guidelines, as we read them, require that the shares be sold, or if there is an exception made in that regard by the Premier, that the Premier, in a timely fashion, make a public statement that there has been an exception made in the case of Mr Wessinger and the reasons an exception has been made. Is that how you read the guidelines?

**Hon Mr Evans:** That is how I read them.

**Mr Sorbara:** You would have expected either that the shares were sold or that the Premier reported to the public about an exception?

**Hon Mr Evans:** Right.

**Mr Sorbara:** It is possible that Mr Wessinger has sold these shares, is it not? You would not know. There is no requirement for him to advise you?

**Hon Mr Evans:** Right. If he had sold them, I expect that he would notify me of it as a substantial change in his assets. He is not required to, but I have asked all of those who came in to let me know if they have a substantial change.

**Mr Sorbara:** So you asked Mr Wessinger.

**Hon Mr Evans:** I asked everyone.

**Mr Sorbara:** You asked everyone to advise of substantial changes.

About 10 days ago the Premier undertook to the member for St George-St David, Mr Scott, who is here, that he would provide a statement setting out which ministers and which parliamentary assistants had divested assets and which assets they had divested. Included in that statement, if I understood the undertaking in question period correctly, is that he would set out which ministers had not had to divest anything. Have you seen that statement yet?

**Hon Mr Evans:** No.

**Mr Sorbara:** No statement of that sort has been delivered to your office.

**Hon Mr Evans:** Right.

**Mr Sorbara:** We have not seen it either. I am asking whether any members of the committee have seen that statement. Has there been a communication to you from the Premier's office to expect such a statement?

**Some hon members:** No, nothing.

**Mr Sorbara:** Okay. We are wondering where it is.

**Mr Mills:** I do not think he said by such-and-such a date.

**Mr Sorbara:** The member for Durham East says there was not any time set for it. I agree, but our understanding was that there was going to be a timely disclosure.

Frankly, we regret that there is not a timely disclosure and we regret that the Premier has not agreed to come before the committee to discuss his commitment in that regard. Anyway, we look forward to it.

I just want to conclude by thanking Chief Justice Evans for coming to this committee again and for answering our questions. I want to reiterate that he has been a great help to me in ensuring that I separate my own private interests from my public responsibilities, and I think the same can be said of every member.

Just along the lines that the member for Quinte made reference to in his comments, I believe very strongly that every single member of this Legislature comes here to do an honest job on behalf of the public. I think it is guidelines such as the ones we are considering now that are as much the cause of the problem as the solution to the problem. When you put before the Legislature the unrealistic requirement to sell all you have to serve at the pleasure of one man, the Premier, then you create expectations among the people of the province that are unrealistic. When you do that, I think you fail in your public responsibility. That is to say, if my friend Mr Mills did own a small business, I think he could continue to serve in his responsibility without having to sell that business for the short period of time he is going to be here, for the short period we are all going to be here.

1720

**Hon Mr Evans:** I should give you an example which I think may be pertinent. If I own a shoe store and I become a cabinet minister, I am faced with divestiture or trusts, but I may have children who would like to carry on that particular business, because my term in office may be limited by an election or by a stroke or whatever it happens to be. It may be a very short period of time, and to force me to get rid of that business I think is very difficult and very unwise. If I were faced with that proposition to be either a cabinet minister or divest, I would quit; I would not remain a cabinet minister.

**Mr Sorbara:** Because you could sell the business and the day after—

**Hon Mr Evans:** I do not want to sell it.

**Mr Sorbara:** But if you did sell the business, the day after, you could put your foot in your mouth, with one of your shoes on it, and you would be gone from cabinet. It is a very risky business. I think Peter Kormos knows that. I think Evelyn Gigantes, who resigned basically on a technicality, knows that. Had she sold, she might have regretted it afterwards.

**Mr Carr:** Section 22 of the Premier's guidelines, introduced on Wednesday the 12th, said, "The minister shall not communicate on behalf of a private party in any manner in which his or her position as a minister could reasonably be perceived as influencing a decision." In light of what the Solicitor General went through, what would your thoughts be on that? Knowing the facts, would that have broken these guidelines as you understand them?

**Hon Mr Evans:** I am not so sure that I know all the facts. "Could reasonably be perceived as influencing a



decision"—I do not think I am competent to express an opinion on that, because I really do not know all the facts.

**Mr Carr:** Of course, when you were a judge you had to interpret "reasonable" all the time, and you had witnesses coming before you. Is that the reason, or is it more a political decision?

**Hon Mr Evans:** No. I really do not know for sure what it is all about.

**Mr Harnick:** If we take a look at section 15 of the guidelines, just so there is no misconception here, as I understand it the rule is that ministers are required to divest. Then we have the section (a) and the section (b) and then, following section (b), the exception. Just so we are not labouring under any sort of misunderstanding, if these guidelines ultimately become law or the Premier sees fit to continue to use them as guidelines, the rule is that you must divest and that is the rule in every case, and then it is up to the person chosen to be in the cabinet to prove the exception.

**Hon Mr Evans:** He has to prove first, undue hardship; second, that retention is not inconsistent with the public interest; third, that he has given appropriate undertakings to avoid a conflict, and fourth, that there will be a disclosure.

**Mr Harnick:** The way Mr Winner interpreted this appeared to be as a broad, easy exception available in every case. That is certainly the way I interpreted his words, but in fact in your judicial opinion that is not the case, if this section is to be interpreted the way it is written.

**Hon Mr Evans:** That depends upon what is an undue hardship. If the Premier, for example, thought everything was an undue hardship, then that is very simple: no divestiture would occur. The second part is that it is not inconsistent with the public interest. I do not think it is very easy.

**Mr Harnick:** There is certainly nothing automatic about the exception kicking in. I am not missing a reverse onus here or something of that nature.

**Hon Mr Evans:** No.

**Mr Harnick:** All right. The other thing I want to ask you about this section is where it says "except where the minister satisfies the Premier." It is quite clear that any exception is an exception adjudicated by the Premier.

**Hon Mr Evans:** Correct.

**Mr Harnick:** If these guidelines are to become law by being incorporated into the Members' Conflict of Interest Act, as the Premier has indicated he is considering, could that section realistically remain written as it is, or would that section have to change so that the Conflict of Interest Commissioner becomes the person who adjudicates?

**Hon Mr Evans:** He adjudicates it. I think it would be much more satisfactory, but I sure would not want to do it unless I had a description of what an undue hardship is and what was meant by "not inconsistent with the public interest," and what is an appropriate undertaking, unless they were going to give the commissioner very wide discretion.

**Mr Harnick:** In terms of looking at this public act in which the conflict commissioner makes the adjudications

and investigates and performs the inquiries and provides the final reports, as you are doing tomorrow, would it be realistic to have a section in this act that would take that adjudicative and investigatory process away from the commissioner and put it solely in the hands of an elected member, albeit he is the Premier?

**Hon Mr Evans:** I think it would be a conflict in there. Quite frequently there could be a conflict between the commissioner and the Premier.

**Mr Harnick:** What would the public perception be, as far as you are concerned, if the act provides the opportunity for the conflict commissioner to do the investigating and to prepare the report, and you had one section that read as section 15 of the guidelines read, which would in this very crucial area take that out of the hands of the conflict commissioner and leave it in the hands of the Premier?

**Hon Mr Evans:** I think it would be very unfortunate.

**Mr Fletcher:** Right now PAs and cabinet ministers on the government side are living under these guidelines. If the Premier does not come out and say there is going to be undue hardship or give some reason, a person who cannot meet the guidelines would have to resign from his position. Is that correct?

**Hon Mr Evans:** That is the answer I would expect.

**Mr Fletcher:** As far as Mr Frankford is concerned, he was given a length of time to divest and—

**Hon Mr Evans:** I am quite aware of Mr Frankford because I did have some communication with the Premier's office on Mr Frankford because he was ill for a while, and then because of the peculiar setup he had with his practice and involvement with the government, it was extended to 30 April.

**Mr Fletcher:** So Mr Frankford was not really forced out of his PA—

**Hon Mr Evans:** I think he was just unable to comply with the conflict of interest act.

1730

**Mr Fletcher:** With his contract with the Ministry of Health. It is a long-term contract, I understand.

As far as the government paying to set up the trust is concerned, what gets me on that is that it looks like another perk that government people are getting if the government is paying to set up a trust. It is just a perception again.

**Hon Mr Evans:** You mean if a trust is set up and the government pays for it?

**Mr Fletcher:** Yes.

**Hon Mr Evans:** Yes, I guess it is. On the other hand, a minister may well be making a substantial contribution if he has to pay for it.

**Mr Fletcher:** I know. I am just looking at the perception part of it. The conflict itself is a perception and—

**Hon Mr Evans:** If you are talking about public perception, we will not worry about that. They always think everybody gets too many perks unless they are sharing in it.

**Mr Fletcher:** I have never sold a used car in my life and I do not intend to. Thank you for being here, Judge Evans.

**Mr Winninger:** Chief Justice, I was not able to be present the first time you testified and I do not know if this question came up, but it seems to me that when people like you are appointed to the bench, you probably have to consider conflict of interest and divest yourself of certain assets. Is there any truth to that?

**Hon Mr Evans:** I did not have any problem.

**Mr Winninger:** That is a cautious answer.

**Hon Mr Evans:** Unless I were to give them my children. Actually, I did not have to divest myself of anything. I had some assets—not many, but I had some. I was not required to do that. All that happened if something came up before me and I felt I had a conflict of interest is that I would advise the council that I had a conflict of interest and I did not wish to sit on the case.

**Mr Winninger:** Would you have been able to maintain a partnership in a law firm, for example?

**Hon Mr Evans:** No. That was over with. The day I was appointed, they took my name right off the door. I thought my brother was a little eager, but when I came home it was gone. You have to divest yourself of that, yes.

**Mr Winninger:** Would you have been able to maintain a business, for example, a commercial enterprise, as a judge or justice?

**Hon Mr Evans:** I had owned an apartment building, a commercial building, and I subsequently sold it, but I was not required to divest myself of it, so there was not any problem.

**Mr Winninger:** I have noticed in cases that judges and justices are very prudent about withdrawing from cases where, for example, it might be a landlord-tenant dispute and the judge may have a son who has an income property, or a similar kind of situation where there is a potential conflict. I just thought that perhaps judges and justices who are recipients of the public trust would be very sensitive to conflicts in their own lives and that you might be able to draw an analogy to members of the Legislature, who are in the public eye and who are making decisions that potentially could be conflictual with their own interests, financial or otherwise.

**Hon Mr Evans:** For quite a long period of time, I was the executioner, if you like, the vice-chairman of the Canadian Judicial Council. We dealt with complaints against judges, and then we had also an ethics committee which I was on. We did not have too many problems with that. But if I held 50 shares of stock in Bell Canada and a case came up before me as a judge, I would not think I had to get off the case because I held 50 shares of Bell Canada.

**Mr Winninger:** Yet another justice—I will not mention any names—who held shares in the Canadian Imperial Bank of Commerce declined to hear a case where Canadian Imperial was a party in the litigation.

**Hon Mr Evans:** In a small town he may have felt that way. Of course I always felt too when I was chief that some of them put that up to avoid a tough case. Some guys could reach a long way to find a conflict if they did not want to handle a case; the same thing with lawyers.

**Mr Winninger:** So is it a matter of the magnitude of the interest that determines whether there is a conflict?

**Hon Mr Evans:** No. A judge cannot, from what I say, actively carry on a business; he has to get out of all these things. But I see no reason why he could not, if he was fortunate enough, have a commercial building or an apartment building—a small one, though. I am not talking about one with 10 storeys or something like that, 12, 15, 20 apartments. When he was a lawyer, what was his business? He was a lawyer, not an operator of a apartment building.

**Mr Winninger:** Sure, but just to come back to the banking example, if a judge had an interest of, say, \$500,000 in shares in CIBC, would that make a difference?

**Hon Mr Evans:** I would think so.

**Mr Winninger:** As opposed to if he had \$5,000 in shares?

**Hon Mr Evans:** Yes, sure. Quite.

**Mr Winninger:** Where do you draw the line?

**Hon Mr Evans:** Would he have an influence on it?

**Mr Winninger:** Yes. Where do you draw the line?

**Hon Mr Evans:** Is he going to be seriously affected by the result of the decision? If you have 50 shares of a company that has five million shares, I do not think you are a very big force in it and nothing would filter down to you, no matter what the effect of the judgement was.

**Mr Winninger:** I think I follow your reasoning, but the concept of public perception has also been thrown about today. Aside from the fact that the judge may not have control over the company through his shareholdings but can be seen to be in conflict because he or she has some shares in a company and is adjudicating in a manner that may ultimately affect the ability of that company to carry on its operations profitably, is it not better to remove any potential for conflict of interest rather than to have to draw fine lines?

**Hon Mr Evans:** In an ideal world, yes. However, I have had many judges in the trial division who have said to me, "I have a few shares in this company and there is a case involved"—in the Bank of Nova Scotia or something like that—"what should I do?"

I said, "If you feel any problem with it, don't take it, but if you feel that with your 100 shares in there, it is not really a bother to you, tell the counsel that you have 100 shares in there and see what they have to say." I have never had one of them come back to me and say, "Well, we don't want you to sit on the case."

**Mr Winninger:** But these are lawyers who have to appear before you in the future.

**Hon Mr Evans:** Lawyers are not that sensitive; not the ones I know, anyway. You put the problem to them and all they have to do is say yes or no.

**Mr Winninger:** I am not sure how much time is left, but perhaps in all fairness I should give the floor to someone else.

**The Chair:** Mr Mills and Mrs Mathysen also wish to pose questions.

**Mr Mills:** No, I never said anything.

**The Chair:** Oh, you were just complaining.



**Mrs Mathysen:** In view of the fact that the government had no more questions, my motion was to adjourn.

Interjections.

**The Chair:** Fine. Mr Sorbara first then, please.

**Mr Fletcher:** On a point of order, Mr Chair: I think the motion was to adjourn.

**The Chair:** I am sorry, did you move the adjournment?

**Mr Fletcher:** There was an intention to move it.

**The Chair:** The clerk informs me that as there was an agreement to sit until 6, it would require unanimous agreement to adjourn earlier. Mr Sorbara.

**Mr Sorbara:** This is not motivated by malice or politics or anything. I just wanted to point out to Mr Winninger that his example of comparing the life of a judge with the life of a minister—it is so very different. Once one is appointed as a federal judge, one occupies that role, does one not, until age 75, subject to removal for misconduct or other statutory reasons? In comparison, one sits as a minister in a government at the pleasure of one man, with all the risks inherent in being a minister in a modern democracy.

I do not mind if a judge maintains 100 shares in Bell Canada and continues to use the telephone or to hear cases involving an action against Bell Canada, and I think most judges eventually find themselves not involved in business. But I ask Chief Justice Evans whether he thinks the comparison is an appropriate one between the tenure that a judge has, federally appointed, and the tenure of a minister appointed by the Premier.

**Hon Mr Evans:** I think they are apples and oranges.

**Mr Sorbara:** I understand, and this is pure hearsay, that recently Michele Landsberg wrote a column calling into question your own impartiality in the role that you play. Did you read that column? I did not.

**Hon Mr Evans:** I did. A friend gave it to me. I read it.

**Mr Sorbara:** What is your view about your impartiality in these matters?

**Hon Mr Evans:** It is hard for me to assess my own impartiality, but I did have a little note sent to her. I wrote her a letter. I do not know what will happen to it.

**Mr Sorbara:** It reminds me of Gerry Caplan's column on Sunday last saying that there is now a grand conspiracy going on in the province to destabilize the first socialist government of Ontario.

**Mr Mills:** He never said—

**Mr Sorbara:** Well, no, but my God, if you read the column—pretty soon he is going to require that only his column appear in the Sunday Star, for safety's sake. Awful, just awful.

**Hon Mr Evans:** I do not expect to be judged by columnists or newspaper writers; I expect to be judged by the Legislature. When they lose confidence in me, I expect I will be invited to go elsewhere.

**Mr Sorbara:** I think probably this committee has great deal of confidence in you, even though it is dominated by government members.

**Mr Mills:** Government has the utmost confidence in you.

**Mr Sorbara:** I think you should put that on the record.

**Mr Harnick:** Mr Mills just said that the government members here have the utmost confidence in His Lordship, and I hope that they listen to some of his recommendations when we get down to that part of the deliberations.

Interjections.

**Mr Winninger:** Is this a free-for-all?

**The Chair:** May I draw again to the committee's attention, although we only have 20 minutes left, Commissioner Evans is a soft-spoken person, and we do not tend to be, but it is helpful to be able to hear him.

**Hon Mr Evans:** Fine. I will try and speak up. I have a voice problem today.

**Mr Harnick:** My lord, just following up on Mr Winninger's example, if we transpose that example to the political realm of the person owning the \$500,000 of shares in CIBC, would there be any significant difference in that person carrying on in his role as a minister of the crown if that \$500,000 interest were disclosed publicly?

**Hon Mr Evans:** He can keep it, he can carry on. but he cannot participate in anything having to do with the CIBC or any banking regulation or things of that kind, I would not think.

**Mr Harnick:** But as far as you are concerned, the act of disclosure is as effective as the act of divestiture.

**Hon Mr Evans:** In most instances, yes.

**The Chair:** Mr Mills, you seem to have some active commentary. I wondered if you had any questions.

**Mr Mills:** I am just conferring with my colleague about a point in law, he being the lawyer and me being the patient.

**Mr Harnick:** Gord, remember, you get what you pay for.

**Mrs Mathysen:** I was just wondering, though, by virtue of the fact that the Treasurer, for example, creates a budget that would and could affect a bank and could affect that \$500,000 investment, is there not a problem that that Treasurer knows that his or her colleague could be adversely affected by a budget that the Treasurer feels is necessary in reference to some circumstance?

**Hon Mr Evans:** I think you have to say to yourself, "How many shareholders are there of CIBC?" I think you would look at how many people are going to be affected. Is a whole group of people going to be affected? If so, it is not a conflict. I can only say if a guy had \$500,000 in shares, he would not be in the Legislature.

**Mr Mills:** That is for sure.

**Hon Mr Evans:** Really, to answer your question, I do not think it would affect it in any event, because under the act you are exempt. There is no conflict if it affects everybody, or a large section of the public, and I am sure that CIBC shareholders are widespread.

**Mr Mills:** Can we move now to adjourn?

**The Chair:** With unanimous consent.

**Mr Sorbara:** You want unanimous consent? You got it.

**The Chair:** We are adjourned until 6 May at 3:30.

The committee adjourned at 1743.

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## Legislative Assembly of Ontario

First Session, 35th Parliament

## Official Report of Debates (Hansard)

Tuesday 7 May 1991

### Standing committee on administration of justice

Conflict-of-interest guidelines

## Assemblée législative de l'Ontario

Première session, 35<sup>e</sup> législature

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Le mardi 7 mai 1991

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday 7 May 1991

The committee met at 1630 in room 228.

### CONFLICT-OF-INTEREST GUIDELINES

Resuming consideration of the Premier's conflict-of-interest guidelines.

**The Chair:** We would like to resume our hearings into the Premier's conflict-of-interest guidelines. Although Mr Harnick and Mr Carr are absent, the clerk states that Mr Harnick, the Tory whip, has communicated with her and indicated that we can proceed in their absence.

### ANTHONY PERRUZZA

**The Chair:** We have with us Anthony Perruzza, who will be our first witness this afternoon, as the House proceedings took up the time of Mr Allen and Ms Ziembra. Mr Perruzza, do you have a prepared statement or would you simply like to go ahead with questions?

**Mr Perruzza:** Thank you, Mr Chairman. It is very nice to be able to take the time to participate in the discourse with you here this afternoon. I am not quite sure why I am here. I suspect that will become clearer and clearer, hopefully, as your meeting proceeds and so on. I am basically at your disposal and hope I can participate fully in the discussions with you.

**The Chair:** In the absence of the representatives of the third party, which I hope is a temporary absence, I would suggest that perhaps we could start with you, Mr Sorbara, then go on to the government caucus and allow time for the third party, hoping they will return.

**Mr Sorbara:** Thank you, Mr Chairman. I want to thank Mr Perruzza for agreeing to testify before the committee. I want to begin by putting on the record what position he currently holds in the government of Ontario. What position do you hold, Mr Perruzza?

**Mr Perruzza:** I am parliamentary assistant to the Minister of Revenue and I am the MPP for Downsview.

**Mr Sorbara:** I guess you were appointed parliamentary assistant on 1 October, shortly after you were elected, when cabinet ministers were appointed and sworn in, and I take it you took the appropriate steps to take up the office of parliamentary assistant to the Minister of Revenue. How soon after that did you become aware of the existence of an act affecting you in your role as parliamentary assistant, and specifically, how soon did you become aware of the Act respecting Conflicts of Interest of Members of the Assembly and the Executive Council?

**Mr Perruzza:** I am not quite sure which act you are referring to.

**Mr Sorbara:** It is the conflict of interest act. That is what we generally call it around here. Are you aware of the act now?

**Mr Perruzza:** I do not think I have seen the full act or read the full act. I guess I was contacted, as every other member of the Legislature was contacted, by Judge Evans through a memorandum. I believe at the time it was a letter requesting certain kinds of information from us with respect to properties we owned, our household belongings and things like that. I filled out a very lengthy document for Judge Evans, but I have never fully read the provincial act. I suspect that the provincial conflict of interest act is considerably different from the municipal and school board acts and so on.

**Mr Sorbara:** So you do not know how this act affects your life as a member of this Parliament?

**Mr Perruzza:** I am familiar with the general parameters of the act.

**Mr Sorbara:** Which parameters are those?

**Mr Perruzza:** I guess, to sum it up in a nutshell, that one should not use their public office or their public trust for their own personal gain. I am sure that there is a clause-by-clause, line-by-line act that is probably rather extensive, but to be upfront with you, I have not read the act, no.

**Mr Sorbara:** Now, in the disclosure statement that you submitted to Mr Justice Evans, Commissioner Evans, you disclosed that you owned property at 133 Phillip Avenue in Scarborough. Is that your home?

**Mr Perruzza:** Yes.

**Mr Sorbara:** That is where you live right now?

**Mr Perruzza:** I live there sometimes. It is currently under renovation.

**Mr Sorbara:** Hold on a second. Where do you live?

**Mr Perruzza:** I share my time between my parents' home, which is at 46 Rowntree Mill Road, North York, and some of my time I stay at 133 Phillip Avenue.

**Mr Sorbara:** Did you disclose 133 Phillip Avenue as your place of principal residence?

**Mr Perruzza:** Yes. It is my home.

**Mr Sorbara:** Do you rent it out as well?

**Mr Perruzza:** No.

**Mr Sorbara:** Okay. And you also disclosed that you own farm land, part lots 19 and 20, concession 1, township of Vespra, county of Simcoe, being parts 1 and 2, plan 51R-18668, county of Simcoe, a 5% interest. Is that all one piece of land? I am not familiar with legal descriptions. Is that all one piece of land?

**Mr Perruzza:** To be quite honest with you, I believe it is a farm land. I do not know exactly where it is.

**Mr Sorbara:** How big is this piece of land?

**Mr Perruzza:** In terms of acreage, I am not—

**Mr Sorbara:** A rough guess.



**Mr Perruzza:** Eighty acres.

**Mr Sorbara:** And you have a 5% interest in that?

**Mr Perruzza:** Yes.

**Mr Sorbara:** Who has the other 95% interest?

**Mr Fletcher:** None of your business.

**Mr Perruzza:** To be quite frank with you, I am not sure who the other owners in the property—I know who the owners are in the group that owns a portion of that property; I think the total amount is roughly 20%. I own, I guess, 20% of that 20%, which is 5% on the overall property.

**Mr Sorbara:** When did you receive a copy of the Premier's guidelines affecting cabinet ministers and parliamentary assistants, the guidelines dated Wednesday 12 December?

**Mr Perruzza:** I guess I received them along with every other member or parliamentary assistant or minister that received them. I did not note the date that I had received them. I guess if they are dated December, I probably received them around that time.

**Mr Sorbara:** Okay. And have you read the guidelines?

**Mr Perruzza:** I have read those guidelines, yes.

**Mr Sorbara:** Do you know what the guidelines say in respect of the divesting of assets?

**Mr Perruzza:** Verbatim, I cannot recite them.

**Mr Sorbara:** In your own words, what is your understanding of what the guidelines say in respect of the divesting of assets?

**Mr Perruzza:** They basically suggest, I guess, that one should not hold properties where one could be seen, or perceived to be seen, as being in a conflict.

**Mr Sorbara:** Just to help you out, section 15 says that ministers are required to divest themselves of assets, and there is no qualification of—

**Mr Morrow:** On a point of order, Mr Chair: Even though we are minus the third party here, I do believe that we are still, timewise, under five, five and five. Is that not correct?

**The Chair:** No, we have half an hour, so it will be 10, 10, 10.

**Mr Morrow:** Okay. Thank you.

**The Chair:** Mr Sorbara would still have some four minutes left, minus five seconds. Mr Sorbara.

**Mr Morrow:** Thank you for clearing that up.

1640

**Mr Sorbara:** The guidelines suggest that ministers and parliamentary assistants are to sell these assets, sell assets that they have; not assets that might cause a conflict, but assets generally. Were you ever advised that you should consider selling your 5% interest in this land in the county of Simcoe?

**Mr Perruzza:** By whom?

**Mr Sorbara:** By anyone. Did anyone ever suggest to you that you would be required to sell those assets?

**Mr Perruzza:** Yes. You did in the House.

**Mr Sorbara:** Did anyone else from the Premier's office or anyone from the administration?

**Mr Perruzza:** No.

**Mr Sorbara:** Did you ever take any steps to sell your interest in that land?

**Mr Perruzza:** I fully disclosed it.

**Mr Sorbara:** I appreciate that.

**Mr Perruzza:** I sat down in an interview with Judge Evans and I went through everything with Judge Evans, I guess, as everyone else has had to go through, the parliamentary assistants and the ministers and so on. At that time, I indicated to Judge Evans exactly what my involvement in that property was and he did not tell me that there were any specific problems with it.

I subsequently spoke to people in the Premier's office. They suggested and indicated that there were not any problems with it. Nobody has ever contacted me, either from the Premier's office or from Judge Evans's office, and said there are any direct problems with that particular interest.

**Mr Sorbara:** You are saying no one from the Premier's office ever contacted you about the requirement in the Premier's guidelines that you should go about selling your interest in that land in the county of Simcoe?

**Mr Perruzza:** No. Maybe I am not making myself clear to you. Nobody has called me and has suggested or told me that there is a particular problem with a very small investment in a piece of property.

**Mr Sorbara:** Did anyone from the Premier's office ever advise you that the conflict-of-interest guidelines require you, as a parliamentary assistant, either to sell your interest in that land or get a specific exemption from the Premier?

**Mr Perruzza:** No one has ever called me and told me that, no.

**Mr Sorbara:** Did anyone from the Premier's office ever speak to you personally about your disclosure statement or the interest that you revealed in the disclosure statement?

**Mr Perruzza:** No. Because I guess, as all other members have done and as all other parliamentary assistants and ministers—I suspect that ministers have done the same thing. I think that in large part they have taken it upon themselves, as I took it upon myself, to walk into the Premier's office and sit down with an individual—

**Mr Sorbara:** I just want to interrupt you. You said you did walk into the Premier's office?

**Mr Perruzza:** —in that office to discuss this as it related to the guidelines.

**Mr Sorbara:** Who was that individual?

**Mr Perruzza:** David Agnew.

**Mr Sorbara:** You spoke with David Agnew?

**Mr Perruzza:** Yes.

**Mr Sorbara:** What did Mr Agnew say to you about your responsibilities under the Premier's guidelines?

**Mr Perruzza:** He seemed to feel there was not a problem with that particular small investment as it relates—

**Mr Sorbara:** Okay, and can I ask you—

**Mr Perruzza:** —as it relates to—

**Mr Sorbara:** No, I understand.

**Mr Perruzza:** Do you want my answer or do you not want my answer, or do you just simply want to engage me in an answer and then interject?

**Mr Sorbara:** No, I am sorry.

**Mr Perruzza:** It is difficult.

**The Chair:** Mr Sorbara, you have time for only one more question.

**Mr Sorbara:** I have a two-part question.

**The Chair:** You have time for one part of that two-part question then, sir.

**Mr Sorbara:** You have not gotten any better, have you?

**Mr Fletcher:** Your time is running out, Greg. Just ask the question.

**Mr Sorbara:** When did this meeting with Mr Agnew take place?

**Mr Perruzza:** I guess I have talked to Mr Agnew a couple of times, and not just specifically about this, but I—

**Mr Sorbara:** I want to know when you spoke with him on this matter.

**Mr Perruzza:** I believe I spoke to him twice about this, and the first time I cannot—it was quite some time ago.

**Mr Sorbara:** Give me a month, suggest to me a month.

**The Chair:** Thank you. Mr Morrow.

**Mr Morrow:** Thank you very much, Mr Chair, for the opportunity to speak here. Anthony, thank you very much for coming. It is much appreciated. Should the conflict rules apply to all members or only ministers and PAs, in your opinion, please?

**Mr Perruzza:** I think parliamentary assistants and ministers who are either directly involved in making cabinet decisions and parliamentary assistants to some degree who cannot be involved in cabinet decisions—there should be some clear rules that cover them in that. Again, I talk about what is real and what is a perceived conflict. I think you have to take certain steps to restore public confidence in public officials. That has been badly damaged. So for ministers and parliamentary assistants, I am quite comfortable with these rules.

I do not know whether they should be extended to MPPs, either government backbenchers or opposition backbenchers. Certainly there should be some clear rules of conduct for them as well, because they do interact with the civil service and so on and they can access certain government agencies and that kind of thing. So there should be some rules for them as well, but I suspect you do not have to go as far as some of these stipulations.

**Mr Morrow:** Thanks, Anthony. I just have one more quick question and then I will turn the floor over to my colleagues. Do you think the requirements for divestiture, with the exception of cases of hardship, would discourage good candidates from seeking office?

**Mr Perruzza:** I am sorry?

**Mr Morrow:** Divestiture.

**Mr Sorbara:** In other words, if you had to sell everything in order to serve, would that discourage people from running for Parliament?

**Mr Morrow:** Good candidates from running. Thanks, Greg. I appreciate that.

**Mr Sorbara:** Just trying to be helpful. I am very fond of you, Mark.

**Mr Perruzza:** I guess I could see both sides of that, but no, I think if someone is fully interested in serving the public and gaining and sustaining a certain level of trust with the public, he should not have a problem. You cannot serve two masters, really.

**The Chair:** Mr Fletcher.

**Mr Sorbara:** Mr Chairman, can I ask a supplementary on Mr Morrow's question?

**Mr Fletcher:** Thanks for being here, Mr Perruzza. Just one or two questions and then perhaps you can—

**Mr Sorbara:** Why are you guys protecting him? We are supposed to be having an inquiry.

**Mr Fletcher:** You have had your turn and now it is our turn. We will come back to you. Do not worry.

Thank you, Mr Perruzza. Just a couple of things. Do you feel the Premier's guidelines are a little too tough, too hard on parliamentary assistants; divestiture and getting rid of everything?

**Mr Perruzza:** No. I think we can well live within the rules that are established, and again, I stress public confidence in the public representatives. It is very low and I think we have to do our best to bring that back up. You need some very tough, firm rules to do that.

**Mr Fletcher:** I think in the guidelines it does say that members should divest themselves of all properties and holdings, and you have not done this. Is it your view that disclosure is good enough, that disclosure is all that is needed, that we do not need divestiture of holdings?

**Mr Perruzza:** It seems to me that if you read these guidelines closely, there are some allowances in them, although divestment is a good thing. When I originally bought that small share in that piece of property, it was basically an investment in my future. I bought it at a time when the market was relatively good and sound in terms of prices. To simply have to get rid of it today, I suspect I would not fare very well, not only in that the market has bottomed out—but I am not getting the gist of your question, though.

**Mr Fletcher:** I will get back to that. I would like to move a 20-minute adjournment.

**The Chair:** I think we have to recess at this point in any case. I am wondering, Mr Perruzza, if you would be available in a quarter of an hour to return.

**Mr Sorbara:** Mark, no signalling note to the chair. Let Mr Perruzza answer the question about whether he is going to be able to return.

**Mr Fletcher:** I agree with you.

**Mr Perruzza:** Am I going to be available?

**The Chair:** Would you be available in 20 minutes?

**Mr Perruzza:** I consented willingly to appear before your committee and discuss with you conflict-of-interest



guidelines. I was not aware at the time when I gave my consent that I would be testifying or that it would be an inquisition of any sort. But, yes, I have availed myself. I have slotted time in my schedule for you and if you call me back in 20 minutes, then I will be back here in 20 minutes.

**The Chair:** Thank you. We are recessed for 20 minutes.

The committee recessed at 1651.

1705

**The Chair:** We are resuming our hearings in regard to conflict of interest. Mr Perruzza has agreed to return for a further 10 minutes. We had still a few minutes left in the government caucus. I suggest that we then proceed to divide the remaining 10 minutes in half if the third party's representatives do not appear. Mr Winninger.

**Mr Winninger:** Thank you, Mr Chair.

**The Chair:** Oh, I am sorry. Mr Fletcher, you did call for a recess, so you were not finished, sir?

**Mr Fletcher:** I had the floor, but I will defer.

**Mr Winninger:** Do you prefer to be called Anthony or Mr Perruzza?

**Mr Perruzza:** By you, Anthony is just fine.

**Mr Winninger:** Anthony, I understand you were a former city councillor, and you have indicated you had to abide by certain conflict-of-interest guidelines in that position. Did you?

**Mr Perruzza:** Yes.

**Mr Winninger:** And you knew what the general principles of those conflict guidelines were as a city councillor, did you not?

**Mr Perruzza:** Yes.

**Mr Winninger:** Then, when you became elected and you became a parliamentary assistant to the Minister of Revenue, you were informed that there were certain conflict guidelines that bound you in that job as well, correct?

**Mr Perruzza:** Yes.

**Mr Winninger:** And you were invited to speak with Mr Agnew, I expect, were you not?

**Mr Perruzza:** No. I was not invited by anybody. I took it upon myself to go in and speak to Mr Agnew about this.

**Mr Winninger:** So you were interested in how these guidelines might impact on you and any property or business interest you might have.

**Mr Perruzza:** Exactly. Yes.

**Mr Winninger:** You were aware of the general thrust of these guidelines. You described the thrust quite well when you said that any personal interest you might have should not conflict with your public duties incumbent on you in the office you hold.

**Mr Perruzza:** Exactly.

**Mr Winninger:** So you spoke with Mr Agnew and you discussed some of the interests you might have that might pose a potential problem. Is that correct?

**Mr Perruzza:** No, I basically discussed what I had and I discussed with him how he saw them as relating to me in terms of what my interests were, and basically it got

left at that. We had a discussion on it and it was felt that there was not a problem.

**Mr Winninger:** You mentioned earlier that 5% interest that you enjoy in that property in Simcoe, I believe it was. That did not pose a problem. Was it because of the size of the interest, or the use of the property? Do you recall what reason was given why that should be accepted?

**Mr Perruzza:** I think it was a—

**Mr Sorbara:** On a point of order, Mr Chairman: I am trying to follow this testimony, but do I take it that the testimony is that Mr Agnew said that the 5% interest did not pose a problem? Is that the testimony here?

**Mr Winninger:** Maybe we could clarify that for the sake of Mr Sorbara. Do you recall whether you were advised that this particular interest you enjoy did not pose a problem in terms of the conflict guidelines?

**Mr Perruzza:** I went in, I explained exactly what my interests were, I guess how they were structured, we had a discussion and he asked me about the property. I explained to him that it is basically in trust and I have no real decision-making abilities on it in any way and it is a very small investment. It was a small investment made several years ago. After a discussion around that, he basically felt that it was not a problem as it related to the guidelines, because I complied with them to a substantial degree in that it was an arm's-length person holding it and there was no controlling and no decision-making abilities on that property on my part and so on.

**Mr Winninger:** And perhaps because it was not inconsistent with the public interest that you continue to hold that 5% title.

**Mr Perruzza:** Exactly. That was my view when I read the guidelines and that is why I went in, to make sure that they did not have a problem with that as well, in so far as it was seen.

**Mr Winninger:** Was it also agreed that it might cause you undue hardship were you ordered to divest yourself of that small property interest you held?

**Mr Perruzza:** I think it would pose a bit of a difficult problem in disposing of it, yes.

**The Chair:** Last question, Mr Winninger.

**Mr Winninger:** Yes, certainly, Mr Chair.

In fact, you did receive a letter on or about 12 February 1991 which indicated that certain exceptions might be made where there is an owner-occupied property or recreational property. Is that correct?

**Mr Perruzza:** I received that letter, if it is the letter that was circulated to all parliamentary assistants and ministers, wherein it explains in layman's terms what we should be complying with in terms of our holdings and that kind of thing. I understand there is an exemption part in there, but I guess it was felt that I did not require a specific exemption because I explained fully, I disclosed fully, it was arm's length, no decision-making abilities on it. So I guess I complied with that document.

Of course, you can read that many ways and I suspect that some people have read it basically to include the world. You can include your suits. You own a suit; divest

your suit, get rid of it, you should not have one. I would not go that far. I suspect if we all started walking naked, there would be a bit of a problem in that.

**Mr Harnick:** So you would agree, Anthony—just carrying on with that—that these guidelines of divestiture really go too far; they put you in an awkward position.

**Mr Perruzza:** I guess they can be interpreted and read by different people differently. The way I read them, I really do not see a problem for either parliamentary assistants or ministers of the crown in complying with them, but I guess if and when you read them—and I have heard you speak on them in the House, as I have heard Mr Sorbara—

**Mr Harnick:** My time is very limited in the amount of time I have to ask you questions, so I would insist that you provide me with direct answers. What I am saying is, those guidelines, based on what you have told Mr Winninger, have been onerous to the point where it has made your life difficult. Correct? Yes or no?

**Mr Perruzza:** Well, I think there are many—

**Mr Harnick:** Yes or no?

**Mr Perruzza:** There are many things in public life which make your life difficult. Phone calls at midnight can make your life difficult.

**Mr Harnick:** All right, tell me this. Would the idea of merely disclosing these assets that you had or you have, in your opinion, by making them public and disclosing them, been enough?

**Mr Perruzza:** The kinds of conflict-of-interest guidelines that I have been used to seeing at other levels—and I have sat on school boards and municipal—

**Mr Harnick:** No, I did not ask you about that. Would disclosure of your interests—

**Mr Perruzza:** Well, I am answering your question, if you will permit me. I do not know how to answer it in any other way.

**Mr Harnick:** Say yes or no.

**Mr Winninger:** On a point of order, Mr Chairman: I think it is painfully clear here that Mr Harnick is badgering the witness, and I think the witness should be allowed to answer his question without being interrupted.

**The Chair:** That is not a point of order, Mr Winninger. However, Mr Winninger does have a point that one should observe some respect for the witnesses.

**Mr Harnick:** Seeing as we are not getting anywhere with that question—you were a North York councillor, is that correct?

**Mr Perruzza:** And a trustee before that, yes.

**Mr Harnick:** Ah, a trustee as well. At that time I understand you ran into a problem with the North York council in terms of some stationery that you purchased.

**Mr Perruzza:** Well, depending on how you see that. I do not have any—

**Mr Fletcher:** On a point of order: This has nothing to do with the conflict-of-interest guidelines that the Premier has put forward, and that is what we are discussing.

**Mr Harnick:** I have a point of privilege here.

**The Chair:** That is not a point of order; however—

**Mr Perruzza:** I will answer his question. I have no problem with that.

**Mr Harnick:** I have been given 10 minutes, and Mr Fletcher has indicated that this has nothing to do with it. I advise Mr Fletcher to read guideline 4, and—

**The Chair:** You still have that 10 minutes.

**Mr Harnick:** I would like some time given back to me if I need it.

**The Chair:** That time will not be deducted.

**Mr Harnick:** Thank you. I gather you purchased some stationery that was the cause of some conflict between you and the mayor and other members of the council. Was that correct?

**Mr Perruzza:** I believe it was May before the election call—

**Mr Winninger:** On a point of order: Mr Harnick has directed our attention to paragraph 4 of the guidelines, which states, "Ministers shall at all times act in a manner that will bear the closest public scrutiny." The time period which Mr Harnick is referring to was long before the election, long before the guidelines were promulgated, and therefore totally irrelevant.

**Mr Harnick:** I beg to differ, for the simple reason that the North York council still has not received reimbursement for the stationery or for the business cards that were purchased. As long as that cloud is hanging over this gentleman's head, he is in breach of the guidelines.

**The Chair:** Are we arguing the point of order, Mr Harnick?

**Mr Perruzza:** Roughly two and a half years into the Liberal government's mandate, as a North York councillor I went ahead and ordered some stationery as I had done the year before. I got a good deal on the paper because it was left over from a fire department mailing, and I believe I got roughly the same quantity of letterhead for about \$700, which was considerably lower in terms of the yearly expenditure than the North York council average. The following year—

**Mr Harnick:** How much stationery did you buy?

**Mr Perruzza:** It was somewhere in the neighbourhood of 20,000 sheets. The following year—

**Mr Harnick:** When did you order the stationery?

**Mr Perruzza:** It was about—well, I am going through the history of it, if you want to listen to it.

**Mr Harnick:** I do not want the history of it. I want you to answer my question.

**Mr Perruzza:** I am answering your question.

**Mr Fletcher:** On a point of order: This is more of a badger than it is anything else. Mr Perruzza did answer the question. He was asked a specific question. He gave a specific answer to the question. Now he is being badgered. I do not think that is the purpose of this committee.

**The Chair:** That is not a point of order.

**Mr Perruzza:** If you will permit me I will answer your question fully. I bought the stationery, and the cost at that



time was about \$700. There were about 20,000 sheets, and that is the way I conducted my business. I would run it through the computer, there would be no more costs incurred and I would call all my public meetings and notices and my information notices to the ratepayers with that letterhead.

The following year I ran out in May, two and a half years into the Liberal mandate. Because I suspected I would be there for at least my full mandate, I suspected the Liberals would not—at that time it was my feeling that they would not call an election until at least their fourth anniversary in office.

**Mr Harnick:** When did you order your stationery in 1990? In May?

**Mr Perruzza:** In May, two and a half years into the Liberal mandate.

**Mr Harnick:** Do you have a date that you ordered it?

**Mr Perruzza:** Not with me.

**Mr Harnick:** All right, and when you ordered it had you run for the nomination in Downsview at that time?

**Mr Perruzza:** Well—

**Mr Harnick:** Had you run for the nomination in Downsview? The answer is yes or no.

**Mr Perruzza:** The answer is not yes or no, Mr Harnick, because—

**Mr Harnick:** Well, is it maybe?

**Mr Perruzza:** —you are not familiar with the way the North York print department works.

**Mr Harnick:** When you ordered the stationery, had you at that time run for the nomination and obtained the nomination as the NDP candidate in Downsview? It is very simple.

**Mr Perruzza:** In a phone call to the North York print department—the fellow's name is Wayne—

**Mr Harnick:** I did not ask you whom you ordered it from. I just wanted to know whether you were nominated. Are you thick?

**Mr Perruzza:** If you want to get to the bottom of it—if you want to know what happened—

**Mr Harnick:** Mr Chairman, would you tell him to answer the question?

**The Chair:** Mr Perruzza, would you answer the question?

**Mr Perruzza:** I believe that the paperwork on the stationery—

Interjections.

**The Chair:** Mr Sorbara, will you allow him to answer the question?

**Mr Sorbara:** On a point of order, Mr Chairman: In this case it is a valid point of order. Interjections on a committee like this are always out of order. I see the member for Yorkview sitting in the audience. He knows that as a member—

**The Chair:** The member for Yorkview is free to join us at the table if he wishes.

**Mr Sorbara:** —he is free to come up and make inappropriate interjections as a member of the committee, but certainly he is not permitted to interject from the audience. I can see now that he is coming to the table. I will ask him not to interject in the way in which he was interjecting while he was in the audience of this committee. Can we just add some time to Mr Harnick's—

**Mr Perruzza:** I understand what Mr Harnick is saying. He does not want a full explanation. He just basically wants answers—and I will answer it—that fill his own particular agenda.

**The Chair:** The question, please, Mr Perruzza.

**Mr Perruzza:** The answer to his question is that the paperwork on the stationery I believe went in the same day, I guess in the day, and I got the nomination to run as an NDP candidate in the provincial election that night.

**Mr Harnick:** So you knew you were running for the nomination before you ordered the stationery. Is that correct?

**Mr Perruzza:** When I ordered my stationery, there was another year and a half left in my term of office at North York and we were two and a half years into the Liberal mandate. I figured the Liberals would go at least into their fourth year, or the anniversary of their fourth year, by which time I would have lived out my mandate as a municipal councillor in the city of North York. I probably would have sent you a notice in the meantime as well, because you live in the city of North York and sooner or later you would have ended up on my list and I would have provided you with some valuable information about city functions and city business. If I did not get an opportunity to do that, I regret it.

**Mr Harnick:** That would mean that you were probably the only NDP member who did not have any inkling that they might be calling an early election. Is that correct?

**Mr Perruzza:** I think if you have been in public life for some time and if you have been following—

Interjections.

**Mr Morrow:** Come on. Do not be silly.

**Mr Perruzza:** If you have been involved in public life for some time, those things are fuelled all the time.

**Mr Harnick:** You want me to call him “thick” again?

**Mr Mammoliti:** Call him “thick” again.

**Mr Harnick:** Mr Mammoliti has asked me to call you “thick” and I am going to call you “thick” again to satisfy Mr Mammoliti. Now, if I can ask you the next question—

**Mr Perruzza:** Can I ask you what that means?

**Mr Harnick:** No. You can ask him. He seems to know all the answers.

**Mr Perruzza:** But you are calling me the name. What does that mean?

**Mr Harnick:** The next question I want to ask you is whether you used any of that stationery or those business cards in the election campaign or in the period between the time you were nominated and the time you were elected.

**Mr Morrow:** Point of order.

**The Chair:** Mr Morrow on a point of order.

**Mr Morrow:** Can I ask that we recess to walk back into the House to vote, please?

**The Chair:** I would suggest that we do recess for 10 minutes, at the end of which time, if Mr Perruzza would be willing, Mr Harnick still has a couple of minutes and Mr Rizzo, if he wishes, can pose questions.

**Mr Harnick:** May I go on the record for just a moment? I am finished with my time and I will give the balance of it to Mr Sorbara.

**The Chair:** Okay. We are recessed for 10 minutes.

The committee recessed at 1724.

1736

**The Chair:** I would like to resume if we can. Mr Perruzza, in the absence of Mr Rizzo, it seems we have no further questions, and I believe all three caucuses have used their respective times. Thank you very much for coming to join us and for being so generous as to return. Hopefully we will see you soon in the House again.

**Mr Mills:** I would like to say, Mr Chairman, that when people have nothing to hide they readily appear before the committee. I think that was very evident in your appearance here, Mr Mammoliti.

**The Chair:** Before you leave, though, there is one point which one of my colleagues brings to my attention. I am not sure where it derived from, but abusive language to other members or to witnesses is totally out of order and inappropriate.

**Mr Carr:** I missed it. Who called who what?

**The Chair:** You were not here, sir.

**Mr Carr:** What did they call him?

**The Chair:** I will not repeat it; that only gives it more credence. I am not sure where it derived from; however, it was repeated, and I would advise people not to debase themselves to that point of using such language. Thank you, Mr Perruzza.

**Mr Perruzza:** Thank you very much, Mr Chairman. That comment, coming from Mr Harnick, and seeing how he is from North York, I have had considerable experience of some individuals who are far better than he who have called me a lot worse, so I take it with a grain of salt.

**The Chair:** Regardless, it should not happen here.

**Mr Perruzza:** I recognize there is a line and we should not step over that. Thank you very much. I hope I was of help.

**The Chair:** Thank you very much, Mr Perruzza. Interjection.

**The Chair:** You had more than your time initially, sir.

**Mr Sorbara:** Hold on a second. You are not leaving, are you?

**The Chair:** Yes.

**Mr Sorbara:** Mr Chairman, just as we recessed—

**The Chair:** We were out of time. We had used more than half an hour.

**Mr Sorbara:** Can we ask the witness if he is willing to stay for a few more minutes? I just have a few more questions.

**The Chair:** We have some important instructions to the researcher at this point and I have to do that.

**Mr Sorbara:** I have three more minutes of questions. I just ask the witness if he would be willing to stay for three more minutes of questions.

**The Chair:** I would defer to the committee, but I believe we have spent more than half an hour with Mr Perruzza, who has been more than—

**Mr Sorbara:** I ask you once again to ask the witness whether—

**The Chair:** I am not sure I want to leave that determination to the witness alone. I would open that question to the committee. We have an important piece of business in Parliament. Mr Perruzza was scheduled for half an hour.

**Mr Sorbara:** Then I put it to the committee. Is there some reason why the members of the committee do not wish Mr Perruzza to testify for three more minutes?

**Mr Mammoliti:** Time is up.

**Mrs Mathysen:** I believe we had some instructions to give to the researcher.

**Mr Sorbara:** I would be willing to forgo instructions. I do not know what you are hiding, but, believe me, I am not going to reveal something in my—

**Mrs Mathysen:** These kinds of tactics are simply not going to work. You know we have nothing to hide. That has been made very clear by virtue of the fact that Mr Perruzza has come here and stayed overtime. The point is that we have come to that point in the day where we have to give instructions to the researcher. Case closed.

**Mr Sorbara:** Can I ask you once again if you will invite the witness to join us for three more minutes?

**The Chair:** I have invited the witness to return on two occasions. The witness has spent more than the allotted half-hour. I think it would require the agreement of the committee as a whole if we were wishing to extend that time. We have other business in front of us. It does not seem as if we have that agreement.

**Mr Carr:** The only thing is that Mr Harnick thought there was some time left.

**The Chair:** Mr Harnick was not here at the outset, though.

**Mr Carr:** He thought there was some time left for the questions, so if we are going to go into instructions I would just like to see if I could get hold of him to come back too.

**Mr Sorbara:** Once again, Mr Chairman, before we adjourn, you suggested that you were going to provide some time for Mr Rizzo. Mr Rizzo is not here. Mr Perruzza has been a very co-operative witness. I assure you that I have no intention of embarrassing him. If you do not invite him to stay—

**The Chair:** Should we recess for a few minutes so that Mr Harnick can be alerted?

**Mr Sorbara:** No, I think we should just carry on with instructions.

**The Chair:** Okay. How shall we proceed? Ms Swift.



**Ms Swift:** I have provided the committee with a revised summary of recommendations which includes the commissioner's recommendations to the committee on his last appearance; that was last week. I also provided the committee with a range of alternative recommendations that have been proposed by the witnesses during the course of hearings. You will notice that in this most recent document I have given you I have used the issues and concerns that surfaced from the discussions and testimony of the witnesses and have added to them in an abbreviated form the recommendations I have made.

I suppose one way of proceeding is to follow the outline of that range of alternatives and simply go through and have the committee discuss and provide recommendations under those various headings. If that meets with the approval of the committee, then that is fine; we can proceed that way. If you want to deal with the issues in a different order, that is fine. I leave it to you.

**The Chair:** Okay. Any discussion?

**Mr Sorbara:** In the absence of any direction from the government members, I would recommend, based on the evidence we have heard, that the report concentrate on the lack of independent evidence, that is, evidence from non-politicians, that the guidelines as proposed by the Premier are reasonable and, as the report set out that there was very little evidence of a political nature supporting the guidelines as proposed by the committee, that the report conclude with the recommendations that the Premier not implement his guidelines and that no further work be undertaken with a view to putting the guidelines into some sort of legislated form.

Is there any other business? I would move adjournment if there is no other business.

**The Chair:** Did you just move adjournment?

**Mr Sorbara:** Well, there are no other instructions.

**The Chair:** You came up with the suggestion. Mr Carr was going to get Mr Harnick for instructions.

**Mr Sorbara:** No, that was on the Perruzza matter. Mr Harnick agrees with me on this matter.

**The Chair:** I could be corrected, but I believe that was in regard to the guidelines.

**Mr Sorbara:** Okay, we do not have to adjourn. I will not move adjournment. I have given instructions to our competent researcher and I take it that they are not so terribly offensive, so let's get out of here. Let's go home. We have a vote before we go home.

**Mr Mills:** They are not necessarily the instructions of the committee.

**Mr Sorbara:** I am inviting other members of the committee to give instructions if these are not acceptable.

**The Chair:** I am sure that you as committee members have the right to offer debate or suggestions in regard to those suggestions or offer your own suggestions or directions.

**Mrs Mathysen:** We have the list of issues and concerns and basically the chronological progression through the guidelines. I suggest we begin at the beginning and go through in that logical, chronological way.

**The Chair:** What are you are suggesting?

**Mrs Mathysen:** That we have the list of issues and concerns and that we begin there and simply go through that list of concerns in a logical progression.

**The Chair:** And the list is as the researcher has already presented to you?

**Mrs Mathysen:** Yes, as the researcher has recommended.

**The Chair:** Does that agenda meet with the approval of other committee members? Mr Sorbara? Mr Carr?

**Mr Sorbara:** So long as the directions I have just put forward are incorporated into that in one way or another, that is fine. I agree with Mrs Mathysen. We could do that and then the conclusions I have suggested.

**The Chair:** Mr Carr, Mrs Mathysen suggests that we use the guidelines for discussing this as the researcher has already provided us, that is, the guidelines for reviewing the guidelines. That is this document you were just handed.

**Mr Carr:** Yes.

**The Chair:** Should we start now? Having only 12 minutes, we would have to recess.

**Mrs Mathysen:** Would you like to start now?

**Interjection:** Where do we start?

**Mrs Mathysen:** Yes, let's begin. Let's get something done today. We will begin with the purpose, shall we not? All right. The underlying purpose of the guidelines: I believe if you would go back to the original document, you will see that the purpose is:

"To increase public confidence in the integrity of government, the following guidelines impose upon cabinet ministers and parliamentary assistants more stringent standards of conduct than those imposed by existing conflict-of-interest legislation and policies."

I would suggest that that is the purpose that the government side would support.

**Mr Sorbara:** Do I take it then, Mr Chairman, we are going to go through each of these headings and subheadings and have a debate as to what the report ought to say? Is that what the members of the committee are contemplating?

**The Chair:** What you have agreed to, yes.

**Mr Sorbara:** Is that what you want to do, Irene? We had offered instructions to—

**Mrs Mathysen:** At least I think we should go through them, and if they are not contentious, that is fine.

**Mr Sorbara:** I am perfectly willing to do that. I am perfectly willing to consider each of these subheadings. I would want, though, the main emphasis of our report under the purpose of the guidelines to stress certainly the penultimate point, "The guidelines will do little to change public perception," and the final point as well, that "Public perception will never be satisfied either by the existing act or the guidelines."

If I could embellish my point somewhat, it was I guess several months after the first publication of the guidelines, presentation of the guidelines in the House to us as legislators, along with an announcement by the Premier that he wanted to restore integrity to the process and the profession

of public service, that a number of government ministers started to run into trouble. It was clear, at least in my experience of the past few months, that there has not been an increase in the sense among the general public that there has been any restoration of the integrity of politicians. If politicians behave with integrity, my sense is that the public in a democracy will see that they are behaving with integrity.

If, for example, you take the case of Mike Farnan, as just as one example, it is a case that virtually every editorial writer in the province agreed should result in Mr Farnan not losing his integrity, but just stepping aside for a while, while a police investigation by the RCMP is conducted. There is no shame in that. The shame is in insisting that you can, under any circumstances that a Premier or that a minister determines, stick around as a minister.

My respect for Mike Farnan has been reduced. I will tell you the truth. Mike Farnan used to be my critic when I was Minister of Consumer and Commercial Relations and we had a very good relationship and I find him to be a very honourable man. I cannot understand why he will not step aside in the midst of this investigation—same with the Minister of Community and Social Services.

When you add on to that the fact that for some reason Kormos is thrown out of cabinet, and we cannot quite yet figure out what he did or did not do, and you compare that with the others, it is stuff like that that gives rise to some question about the integrity of ministers.

We are talking about the purpose of these guidelines. I do not care what you put into the purpose of the guidelines, although I think it would be erroneous to suggest that as a result of these guidelines the public will have greater confidence in the ministers and the parliamentary assistants that are in charge of the government of Ontario.

I would like to get our final recommendation to our researcher as quickly as possible. I would like to do that today. If we will agree that the conclusions that I proposed are acceptable ones, I think the rest is something that could be left to the researcher. On that basis I will complete my arguments on the first issue, which is purpose.

1750

**Mr Carr:** One of the concerns I have is what Judge Evans raised in this very chair last week when we were discussing public perceptions. I do not know what the exact wording was, but he said: "What is public perception? How can we judge that?" He said that, as a former judge, it is very difficult to do that.

The concern I have is that we put those lines in to increase public confidence and the integrity of government, and I think they are just there for show because they really do not mean much. I like the wording that is there; that the public perception can never be satisfied, but the purpose ought to be to set out ways of dealing with the impropriety, should it occur, instead of trying to create a system to prevent it from occurring. That is the major thrust of what the judge was saying when he appeared before us.

The other line that I think—words to the effect of what he said—is the only purpose is to serve to create false expectations, that it might be meaningful. I think we

should listen to Judge Evans and some of his recommendations and try to take out all the wording that is really only there to try to make us politicians feel better. When you look at what the purpose would be, points 1, 2, 3 and 4 ought to set out ways of dealing with any of the problems, should they occur, instead of trying to create a system to prevent them. That is the only thing I would add, Mr Chair.

**Mr Winninger:** Just by way of instructions, certainly the purpose in the guidelines is very felicitously set forth and in fact expanded on by a number of the ministers and our Premier who spoke and whose comments have been distilled by the research staff. Certainly we need to encourage public confidence in the integrity of government, and in the past we have had a conflict of interest act. On the other hand, we have had ministers in the past—not in this government, but perhaps in other governments—who while they have held cabinet portfolios have had an interest in property where there was actually a lease to the government. Now, what kind of perception would that create in the public mind where you have a cabinet minister who has an interest in property that is dealing with the government? It is exactly this kind of interest that these guidelines go so far towards addressing.

It is one thing to have a conflict of interest act, but it is quite another to ensure that conflicts did not exist, even in the public perception. What these guidelines go towards is removing the potential for conflict of interest and, moreover, the potential for the public perception that there is a conflict of interest. I do not think we need to meddle with the wording of the purpose of the act here because it was very thoughtfully and creatively set down, and I think it reflects a very pressing need.

**Mr Sorbara:** It is just the very comments, like the ones from my friend Mr Winninger, that brings disrespect upon the work that we do. His suggestion is that a member cannot serve in the executive council and have an interest in property where there is a lease between the owners of that property and the government of Ontario. That is a direct slander and criticism of my time in the executive council of the Legislature of Ontario. I want to tell—

Interjections.

**Mr Winninger:** On a point of personal privilege—

**Mr Sorbara:** Why do you folks not just shut up for a second while I finish, okay?

**Mr Winninger:** I think I am entitled to make a point of personal privilege.

**The Chair:** He raised a point of privilege and I do not think that line was necessary.

Interjections.

**Mr Winninger:** You are the one who raves about democracy, let's talk about democracy. I did not mention the name of any cabinet minister and therefore I think it is stretching it, it is overreaching for Mr Sorbara to suggest that I was slandering him.

**Mr Sorbara:** That is not a point of privilege. I just want to tell my friend the member for London South that the circumstances he describes apply only to me in the last



executive council of the province of Ontario. I want to tell him two things.

First of all, I am very proud of the time I spent in the executive council and the standards which governed my activity. I was routinely shocked by the kinds of allegations that the now Premier used to try and make about me, about my family, about my interests and about my conduct. They were not motivated by fact; they were motivated by an attempt to slander an individual member for crass political gain. The fact is that I—

**The Chair:** Mrs Mathysen.

**Mr Sorbara:** Mr Chairman, I am not sure why you are recognizing Mrs Mathysen right now. I am in the middle of comments.

**The Chair:** Mrs Mathysen.

**Mrs Mathysen:** Mr Chairman, I do not really understand Mr Sorbara's point here. I heard nothing from the member for London South that would indicate any kind of slander.

**The Chair:** I thought it was a point of order you were raising. My apologies. I should not have acknowledged you when you did not raise your hand and say it was a point of order. My apologies. Mr Carr next and Mr Poirier.

**Mr Carr:** The only point that I was going to make with regard to that is that you can put all the wording in that you want to increase the public confidence, but really what does it, what increases the public confidence is not a lot of wording that is written by politicians. What really affects the public perception is actions. I think what the public is looking for from this group of politicians is not a lot of words, which quite frankly most people do not believe anyway, but rather action. By action, I mean in terms of—do we have to go for the vote now?

**The Chair:** I was going to suggest that we adjourn in about two minutes' time, at which time it will be 6 o'clock in any case, so we would not have to worry about the bells. Mr Carr.

**Mr Carr:** I will defer to that then.

**The Chair:** So you are suggesting we resume on Monday?

**Mr Carr:** Yes.

**The Chair:** We are adjourned until Monday after routine proceedings.

The committee adjourned at 1757.

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Chiarelli, Robert (Ottawa West L)

Fletcher, Derek (Guelph NDP)

Harnick, Charles (Willowdale PC)

Mathyssen, Irene (Middlesex NDP)

Mills, Gordon (Durham East NDP)

Poirier, Jean (Prescott and Russell L)

Sorbara, Gregory S. (York Centre L)

Wilson, Fred (Frontenac-Addington NDP)

Winninger, David (London South NDP)

**Substitution:** Lessard, Wayne (Windsor-Walkerville NDP) for Mr F. Wilson

**Also taking part:** Mammoliti, George (Yorkview NDP)

**Clerk:** Freedman, Lisa

**Staff:** Swift, Susan, Research Officer, Legislative Research Service











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## Legislative Assembly of Ontario

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## Assemblée législative de l'Ontario

Première session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Tuesday 14 May 1991

# Journal des débats (Hansard)

Le mardi 14 mai 1991

## Standing committee on administration of justice

Subcommittee report

Conflict-of-interest guidelines

## Comité permanent de l'administration de la justice

Rapport de sous-comité

Lignes directrices  
sur les conflits d'intérêts

Chair: Drummond White  
Clerk: Lisa Freedman

Président : Drummond White  
Greffier : Lisa Freedman





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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday 14 May 1991

The committee met at 1644 in room 228.

### SUBCOMMITTEE REPORT

**The Chair:** I would like to call our meeting to order. The first item of business is the report of the subcommittee.

"Your subcommittee met on Thursday 2 May 1991 and agreed to the following:

"1. Public hearings on Bills 7 and 8 will commence on Tuesday 28 May 1991 after routine proceedings with witnesses to include the sponsor of the bill, the Minister of Health and the Attorney General. Hearings will continue on Monday 3 June 1991 and Tuesday 4 June 1991 after routine proceedings and throughout the evening. Hearings and clause-by-clause will conclude on subsequent Mondays and Tuesdays following routine proceedings.

"2. Expenses for out-of-town witnesses will be reimbursed if the witness so requests.

"3. The clerk will, at her discretion, schedule groups and expert individuals for up to one half-hour and individuals for 15 minutes."

Any discussion on the report?

**Mr Fletcher:** In the sentence "Hearings will continue on Monday 3 June and Tuesday 4 June 1991 after routine proceedings and throughout the evening," what does "throughout the evening" mean? Seriously. Are we looking at 6 o'clock, 7 o'clock?

**Clerk of the Committee:** What we are essentially looking at is really from 3:30 until 6 o'clock, taking a break—there will be dinner brought in—until 7 or 7:15, and going until about 9:30.

**Mr Poirier:** Throughout the evening on just Tuesday 4 June only?

**Clerk of the Committee:** No, on Monday 3 June and Tuesday 4 June.

**Mr Poirier:** Both days?

**Clerk of the Committee:** Both days, yes.

**Mr Poirier:** Okay. It is not too clear. For just both of these days and not for any of the other days afterwards?

**Clerk of the Committee:** No. Then we will just schedule people during our normal time until we finish, which should be about two more sessions.

**Mrs Mathysen:** So the expectation is that we will be finished with our review of the conflict-of-interest guidelines by Monday 27 May? Will we have concluded that part of our work?

**The Chair:** That is the expectation, I believe. Yes, that is the agenda that we had set out. It is hoped that we can at least commence with the conflict-of-interest guidelines this afternoon.

**Mr Poirier:** Mr Chairman, are you satisfied with the report of the subcommittee after our discussion of yesterday? Are you comfortable with that?

**The Chair:** Certainly.

**Mr Poirier:** Okay. I just wanted to know.

**The Chair:** All in favour of accepting the report? So accepted.

1650

### CONFLICT-OF-INTEREST GUIDELINES

**The Chair:** Moving on to the conflict-of-interest guidelines, you have before you the additional work that Susan did on the weekend. She likes that mentioned, the hard work that she put in over the weekend in preparation for Monday.

A couple of things have been suggested. One is that we can read the report as we go along, section by section, and add comments or suggest deletions. The clerk reminds me that, I believe, Mr Cooke from Kitchener was of the practice of reading into the record those parts of the report that were relevant. I do not think that is necessary. I think we can all read for ourselves. We can simply take a little time to refresh ourselves on these sections and then add commentary, additions, deletions, starting with part I on page 2.

**Mr Poirier:** I could save the committee a lot of trouble by just answering, "Purpose—Are the Guidelines Necessary?" You just answer no and complete the work of the committee right now. You may be grateful to me for the rest of your parliamentary life.

**Mr Mills:** What did you say?

**Mr Poirier:** Part I, "Purpose—Are the Guidelines Necessary?" I could just answer no right now, we all vote in favour, it is unanimously no and we could just stop it right there and save ourselves a lot of problems and time.

**The Chair:** Are we ready to discuss part I, the section headed "Purpose—Are the Guidelines Necessary?" Are we ready to discuss those? Mr Poirier has a recommendation.

**Mr Poirier:** That is right.

**The Chair:** I think that, along with Mr Poirier's suggestion, perhaps we could simply scratch out, "Are the Guidelines Necessary?" and just leave it in as "Purpose."

**Mr Poirier:** I will, throughout the report, want to reiterate to you that I strongly oppose the guidelines and I would like to report to my friends on the committee that I will do that in a constructive sense. From what we have seen happen since the last meeting when we discussed whether the guidelines were necessary or not, I think my friends and I have seen maybe a bit of the reasons why. I respectfully submit to you that they are not necessary. In fact, it is nice in principle to tighten them, but I will throughout this report demonstrate to you again my thorough opposition to this, but in a very constructive, friendly way.



**The Chair:** Are we ready to discuss the first section, on "Purpose"?

**Mr Poirier:** How did you want to do that, Mr Chair?

**The Chair:** I would suggest section by section, with additions or deletions.

**Mr Poirier:** Paragraph by paragraph? As opposed to looking at a whole series of paragraphs all together—this is how I have seen it done before—we might take it paragraph by paragraph, and if nobody has anything to say, then we proceed to the next one. Would everybody be comfortable with that?

**The Chair:** Okay, the first paragraph after the heading of part I.

**Mr Mills:** We feel that the purpose of the guidelines—and they are necessary—is to preserve the public's confidence in elected officials. We have got to do this by striking a balance between what is necessary to establish the highest degree of integrity in the political process and the need to be practical and reasonable in recognizing the diversity of interest of those people who come to political life. We therefore recommend that we amend, as one of the guidelines, to include all MPPs.

**The Chair:** You are suggesting the guidelines include all MPPs.

**Mr Mills:** Yes, because the purpose is to preserve the integrity of elected politicians per se.

**The Chair:** Why do we not include that as a suggested recommendation? But prior to getting to those specific committee recommendations, we were to be looking paragraph by paragraph.

Are we in agreement with the substance of what Mr Mills has written? Are there changes to that? Mr Poirier has recommended that we omit "Are the Guidelines Necessary" and have simply "Purpose."

**Mr Poirier:** I think the title is quite apropos. I mean, obviously the question is raised, "Are the Guidelines Necessary." My friends in the government party believe yes, I and others in the opposition believe no, and I think both of us are very sincere in this.

I mean, you are new, you are coming in and I believe you are sincere in what you are saying, but I know that from what is said here—and it is quite true—public confidence in politicians and government is at a record low across the country. That is quite factually correct. The question we are all looking at is what must or should be done to bring it back up again.

From what you have heard from the witnesses, virtually all of the witnesses argued vigorously that this perception was erroneous. Nowhere at any time did you hear those who had served—and I think when they came forward, they were very sincere about this—at no time did you hear them say they had seen that. I have been here for six and one half years; I have not seen that.

I want to put it on record for your perusal now, as this will probably go through; also for your consideration later on, and I say this very sincerely. From what I have seen of the public perception of us, obviously it is at a record low, high cynicism. But they will never stop making demands

as to how much you throw away to appear to be completely transparent. They will never stop, especially if somebody is cynical. Do you want to deal with somebody cynical? Do you want somebody cynical to impose the limits or norms or criteria for your level of integrity? I would not.

You have to make your own judgement as to how much integrity you personally have. I still believe, with all due respect again, that the guidelines you are bringing forward are overkill and will not satisfy those cynical people. I honestly believe that, and to the point that it will do unnecessary damage, I think, to what some people—no matter which party; it is not a party thing whatsoever—have spent maybe a lifetime to get together as a small investment.

I honestly do not think you will satisfy and correct the cynicism of those people by doing that. The law as we had it before, if it was well and strongly applied the way I think your government could have continued to apply it, would have been more than sufficient, because when you look at the integrity also of Justice Evans to look into this, and I will be the first one to mention it, if any member had gone against that law the way we had it, hit him or her hard, and hit that person good, whack the heck out of that person—you have not seen it yet and, from all of the evidence that you heard, nobody had seen it. I have not seen it and I doubt you would see it, because they would stand to lose too much and I think Justice Evans would have been tough with anybody going astray from that law.

I respected the law the way our past government brought it forward. Some people who are very cynical would come up to me and state some very cynical things about all politicians in general, or myself in particular; it does not matter. Because if you are cynical against one, you are probably cynical against all of us. As I have said to you and many others, what I see happening in the House, we all fall and splatter mud on all of our 130 faces, not just the Tories, the government party or the Liberals.

I tell these people: "How much do you want me to be on my knees and divest myself of everything and get rid of everything for you to finally get a perception that we are even more honest than we could be with the previous law? How much would you want me to do?"

When you have to deal with cynical people, there will be no limit to what they will ask of you. I reach my own limit. When you go to bed at night, you are going to bed with your own conscience. Have you respected the law, or whatever guidelines we will finally end up adopting?

Even with these, I honestly do not think the cynical people are going to be satisfied with that. I honestly and respectfully submit that you are catering to the cynical by adding these unnecessary guidelines of overkill that are going to limit the economic welfare of the members coming forward to sit here, and it will not accomplish, unfortunately, what I think you expected these guidelines to accomplish.

I find that sad because, if we should do something, no matter which law we bring forward, no matter who brings it forward, you would hope that what you bring forward is going to have the desired result, that what you aim to do is

what you actually get and that the people perceive that what you brought forward as a law will do what you think it is going to do. And this will not do it.

I want this for the record, for you to consider later on. I know you may not believe me now, but I submit that to you. Whip it out, bring it forward five years hence or four years hence, and you will see that this will not improve what you think it is supposed to improve.

But I want it to go down—and I submit it to you, my friends. I respect all of you very much although you are of a different party, but I offer this most sincerely. It will not do what it is supposed to do.

1700

**Mr Fletcher:** I tend to agree with my friend sitting across from me that the public perception of politicians can be ruined by what is done in another province, in another country, and people will continue to say that politicians are all the same. I also believe that there have to be rules. Even though I personally think that maybe these rules go a bit too far, are a bit too strict, I still agree there have to be some rules that we must set up in order to at least try to give the appearance, if nothing else, that we are trying to make it so politicians are not looked on in disfavour all the time.

As I said before, I think they are a little stringent and a little tough, but from what has gone on in the past—and I am not throwing blame on any previous government or any previous politicians, but it has happened. This happened with people in our party in different provinces and elsewhere. We have to, I think, let people see that at least in Ontario we are willing to take a step that other provinces and other governments have not taken, and that step is to make it tough so we can in some way, shape or form show we are trying to be an honest and open government and also that the members of this Legislature, no matter which side of the House they sit on, are all going to live by the same rules and all be open to public scrutiny. For that reason I can support, for the time being, what Mr Mills has said as far as all members are concerned. For the time being. But if they prove to be too strict, and if they prove to be too cumbersome, perhaps it would be a time to come back and look at these guidelines we are passing.

**Mrs Mathysen:** My point is simply that I think as politicians we are very much subjected to innuendo and the public perception that we may not always have public service in mind. I think if we create a guideline, something that is concrete, something people can look at and see that yes, there is a will to create a set of guidelines that will not just help the public understand what is acceptable and what is not, but also be a guideline for ministers and PAs—because I have a sense that right now there is this sort of shadowy uncertainty. I think that a concrete and very, very clear and specific outline of what we expect from our leaders would help to make us free of those shadows and free of that innuendo.

I would say quite simply that the purpose of the guideline will go a long way in giving us something concrete that we can hang our hat on and say, "This is the guideline," and that people will feel very good about that. I think

the ultimate purpose will be fulfilled by the very act of creating something concrete.

**Mr White:** I do not want to speak at length on this issue, but there is one point I wanted to bring out which I think is a little absent in terms of the negative public image of politicians. It is that there is often a confusion between someone who has an obvious conflict of interest between his or her public and private roles, and someone who is not necessarily adhering to conflict-of-interest guidelines, which we have seen recently. I think in the press there is a lack of distinction between those two quite separate phenomena and I think that distinction needs to be brought out. Very clearly, while someone may have property, that does not mean they necessarily have a conflict of interest. That distinction is not at all made or has certainly not been made in the last several months in the press.

**The Vice-Chair:** Before I go to Mr Mills, I would basically like to explain some of the process that might help us in working with this, because if we keep going at the rate we are going now, we probably will not finish section 1. If we could take it paragraph by paragraph, and if there are any changes you would like to add to Susan's paragraph per se, so speak at that moment. But at the end of that, where it does say "discussion," if we can discuss what we want to discuss at that point, then we can get through this piece of literature, if you would not mind, please.

**Mr Mills:** I would just like to clarify why I said what I did. It is because the public unfortunately has a most peculiar perception of what is a conflict and what politicians should or should not be. I think they do not really understand what is really going on. I think if we had these guidelines and we toughened them up a bit, it would enable the public to come to grips and understand what it is all about and thereby take the politicians out of the fishbowl. I know that when I was elected I was terrified to do anything, and I have spoken before here. I bought a new car and I hid it in the garage because I was scared to bring it out, because the public perception is that I had done something or got something, and only recently have I been brave enough to take it out and drive it. That is what I am saying. If we could put everything up front, so that all the people knew, that would help to take the politicians out of that focus, out of the fishbowl. I agree with a lot of your thoughts, believe you me. It is very well taken.

**The Vice-Chair:** If we can please move on to paragraph 1, are there any changes or deletions or add-ons to paragraph 1, the one that starts with "Public Confidence"? Understand this, please, that once we move by this paragraph, that is it.

**Mr Poirier:** In the third line from the bottom of the paragraph: "In their many years of experience the witnesses, all but two of whom are or have been politicians, found that in the overwhelming majority of cases the individuals elected are honourable." I seem to have been here for their testimony, most of them. It says "in the overwhelming majority of cases." I do not think there were any cases they described where they were not honourable.



**Ms Swift:** Subject to correction, it seems to me that several of the witnesses were not categorical. They did not say, for example, in absolutely no situation whatsoever have there been any improprieties. They have said "by and large," or "the vast majority," or "it has been my experience, although I may not know all the cases, certainly within my experience, and I have met only honourable people."

**Mr Poirier:** Conversely, there was nobody who said there was at least one case where they thought so. Nobody had a record of this.

**Ms Swift:** Certainly no one pointed out any case or identified any case that they were aware of.

**Mr Poirier:** Is there another way we could say it that would reflect more precisely what was said?

**Ms Swift:** You mean more inclusively?

**Mr Poirier:** More inclusively, because to me, I try to put myself in the layperson's shoes. I read this, "found that in the overwhelming majority of cases." What does it also tell you? It also tells you that there were some cases, some of them were.

**Ms Swift:** I think factually that may be true. There may be incidents of impropriety, for example, across the country. Maybe Vander Zalm might be some example or in Nova Scotia there might have been some improprieties, I do not know. You said in absolutely no case, and that may not be accurate either.

**Mr Poirier:** It may not be, I agree with you.

**Ms Swift:** I do not think you want to say in "most," you want to make it sound more than that.

1710

**Mr Poirier:** Yes, because as a tribute to those of all three parties who were here at the time these witnesses were here—and we are talking about 15 or 20 years; we are talking six and a half for me—as a tribute to those who were here and in a position to see that, who did not see anything, that none of us can recall having brought forward, nothing has ever been shown for members not to be honourable. If there could be found another way—and of course, there might have been elsewhere in other provinces, but I think for this report, if you people want to bring stricter guidelines, obviously it can only apply to the Ontario situation.

I will be darned if we are going to be held responsible for what may have happened in other provinces. Sometimes we wish we could so that our image could not suffer as much, but we cannot, we will not and we should not be responsible for other provinces. Let the other legislatures take care of their own business. We are talking about Ontario politicians. We are talking about the Ontario Legislature. We have interviewed Ontario witnesses who talk about the Ontario Legislature, past, present and we are looking at the future. I just wish there were another way of saying in English, to translate more faithfully, with all due respect, what they had not seen.

**Ms Swift:** Okay. One suggestion has been that you just take out the words, "in the overwhelming majority of cases," so it would read, "all but two of whom have been

politicians, found that the individuals elected to public office are." Do you prefer that?

**Mr Poirier:** Yes, I think that would be more respectful, in that we are looking for one, but we have not even found one. We never discussed one case. Would my friends be agreeable to that?

**The Vice-Chair:** Does everybody agree to that?

**Mr Mills:** I tend to agree with that. It suits me. It makes sense.

**Mr Poirier:** It represents the truth of what was heard.

**Mrs Mathysen:** How about using the word "believed"? "All but two of whom believed that individual"—

**Mr Poirier:** Yes. I am comfortable with that. I do not want that report to cater to people who are cynical and who claim that we are not honourable people, because some people may read this report and try to find some—as we say in French, that we have fleas about this. But I do not want them to find it, because we have not heard. I am firmly convinced that the witnesses who came forward were very sincere, and they could have had 20 years to find one that was not honourable, and they could not name one.

I think this report and the law we had before—if you people want to bring these guidelines forward, we are innocent until proven guilty, and not the other way around. You will see that you will be challenged on that on a continuous basis by some very cynical members of society. Do not ever forget, we are honourable first, and we are innocent until the contrary is proven.

It reminds me of a particular situation in my first years as a politician. I would do six to seven places on a Saturday night, 300, 350 kilometres on a Saturday night. It was always when you would get to the seventh place that you would find some drunkard who would come up to you at 1 o'clock in the morning and say: "Where the hell have you been hiding? We never see you." So they get the perception that you are not to be seen; that you are invisible; that you do not circulate; that you are not present. Yet you have just done seven places on Saturday night, and it seemed the more you did six or seven places, the more you would be subject to a drunk come up to you and tell you: "You are always hiding. We never see you. Where the hell have you been?"

What you are trying to do with the guidelines reminds me of that. You are very well intentioned, and if I did not know better, I would go along with you. But with all due respect, after my six and a half years during which I have been told to my face and heard things like that, you are doing some overkill. In five or six years hence, you will come up to me and say, and Derek will say that also, "You are right, that is unnecessary overkill," because no matter how strict and tight you will make them, you will still have some cynical people who say: "You politicians are all the same. You go in there and you will fill your damned pockets." Do as I do: ask your constituents what they perceive your salaries are, and get ready to fall on your buns, because it is not going to be \$43,000 they are going to tell you. Believe me.

**Mr Mills:** Millionaires.

**Mr Poirier:** Millionaires, and even if you took these guidelines and applied them to your salary and you took your salary down to \$20,000, they would still believe that you are making \$60,000, \$70,000, \$80,000, or \$120,000, as I have heard some of my people tell me I make. That is why I tell you, you are well intentioned, but you are squeezing the wrong person. You should be squeezing the cynics, not the members who are honourable members and innocent.

**The Vice-Chair:** Are there any other comments on paragraph 1? Seeing none, can we now move on to paragraph 2, please.

**Ms Swift:** "Found" is "believed," right?

**The Vice-Chair:** Yes. I will give you a moment to read paragraph 2. Mr White, do you have a comment about paragraph 2?

**Mr White:** My change is a very small one, and that is along the lines of Mr Poirier's suggesting that the guidelines—I am not sure; the question of necessity is one thing, but I think what we should continually emphasize is that the guidelines, by and of themselves, are not the only way of restoring public trust. In fact, they are only one way. One would hope that they are effective, and I would simply like to include on the fourth line one single change, which is, "There was, however, substantial disagreement among the witnesses as to whether the guidelines are the appropriate way." Obviously what we are looking at is that these guidelines hopefully should do something in terms of restoration of public trust; however, they are not going to catch all of the cynicism that is out there in the public. We hope it will do something, but not everything.

**The Vice-Chair:** All in favour? Great. Okay. Any other comments on paragraph 2?

**Mr Poirier:** I have a question. Did I hear correctly that you wanted, "to impose upon cabinet and parliamentary assistants and all MPPs"? Did I hear somebody say that?

**Mr Mills:** Yes. I said that.

**The Vice-Chair:** Is that a proposal you are making, Gord?

**Mr Mills:** We are just thinking about it. That will be at the end.

**Ms Swift:** It is a section that comes later in the report. It is dealt with specifically later on.

**Mr Poirier:** Okay. If it does come later in the report, obviously we would have to come back to this point in this particular paragraph, the second-last line in that second paragraph, "to impose upon cabinet ministers and parliamentary assistants." Right?

**Mr Mills:** Right.

**Mr Poirier:** Okay. I have a question for all of you. Have you been able to find out whether, if these guidelines are applied, if any of us owned a century farm, that person would have to divest himself or herself of that century farm?

**Mr Mills:** I do not think so.

**Mr Poirier:** Can any of you answer me?

**Mr Fletcher:** This goes into the next part of divestment and disclosure and the only part that could possibly answer that is "(a), any asset, liability or financial interest which causes or could appear to cause a conflict of interest, and (b) all business interests," with the exception of undue hardship. Losing a farm could be an undue hardship. That is the only way I can answer that, and that comes into the next section which we will be discussing.

**Mr Poirier:** Maybe we will get to that point. I really would like to discuss this because it is a very concrete example in that part. We will get to that part when we get to it, if it comes in later on.

**The Vice-Chair:** Any other comments on paragraph 2? Seeing none, can we now move on to paragraph 3, please.

**Mr White:** I would like to suggest that on paragraph 3, the point I was making before about the lack of public distinction between a conflict of interest, which is where a public servant is or appears to be making a private gain from his or her public office, and a lack of adherence to conflict-of-interest guidelines. Obviously one may not be adhering to conflict-of-interest guidelines, but there may not be a conflict of interest.

**The Vice-Chair:** Do you have any changes to the paragraph?

**Mr White:** That is my addition.

1720

**The Vice-Chair:** Do you have any wording suggestions to paragraph 3 then, please?

**Mr White:** Okay. I will make it up as we fly along. "Recently it has become apparent that the issue of conflict of interest is a complex one and one which the public may not fully understand. For example, there is a lack of distinction between situations where there is a conflict of interest—a real or potential gain for a politician's private interest from his public office—and the adherence to conflict-of-interest guidelines, where there may not be any real private gain."

**The Vice-Chair:** All in agreement?

**Mr Winninger:** Is this based on some submissions that were made?

**Mr White:** I am simply referring to the coverage in the press where references were made to conflict-of-interest problems on the part of ministers when in fact there was not a conflict of interest. Elaine Ziemba did not have a major conflict of interest, you know.

**Mr Winninger:** With all due respect to Mr White, I would question why we would base an addition to that paragraph on something that was reported in the press.

**Mr White:** Because I think that is a reflection of the public perception.

**Mr Poirier:** The first line is, "The guidelines appropriately address public perception and the appearance of conflict." Susan, who do you claim is claiming that? I can understand the fact that some of you may believe that, but it is definitely not a unanimously held view.



**Ms Swift:** I believe it was Mr Wildman who made that assertion.

**Mr Poirier:** Okay. Because the way it is written down—it says “because, according to one witness, in politics perception”—it feels as if you are quoting that witness only for the second part of the sentence. That is the perception I get when I read that sentence.

**Ms Swift:** If that is true, that is not what I intended. We could change that, I suppose, just by taking the “according to one witness” and putting that at the front.

**Mr Poirier:** Yes. English may be my second language, but that is the perception I end up getting.

**The Vice-Chair:** There appears not to be total agreement on Mr White’s addition.

**Mr Fletcher:** Could I have it read again, please?

**Ms Swift:** I could make a stab at it.

“Recently it has become apparent that the issue of conflict of interest is a complex issue and the public may not fully understand it. For example, the lack of distinction”—I am missing something here—“between a conflict of interest—a real or potential”—

**Mr White:** I’m sorry, Susan. “There is a lack of distinction.”

**Ms Swift:** Okay. “There is a lack of distinction between a conflict of interest—a real or potential gain for a politician’s private interest from his public office—and the adherence to the conflict-of-interest guidelines, where there may not be any private gain.”

**Mr Poirier:** What are you saying, Drummond?

**Mr White:** Again, with the example I was using before, I read in the media references to conflict-of-interest problems with this person or that person. What they are referring to is not a conflict of interest but their lack of total adherence to guidelines. So these people have not made any gains, they have not benefited personally, nor have their families benefited from their public office, but they are still in possession of a ma-and-pa store. There should be a distinction between whether one is in adherence to guidelines and whether one has made actual profit from having a public office. That distinction is not made in the public’s perception, or certainly not in the journalist’s perception.

**Mr Poirier:** I hope you guys are not bringing forward guidelines to satisfy the people from the media, because you will never satisfy them.

**Mr White:** No, that is exactly what I am saying.

**Mr Poirier:** The second point is, suppose you get rid of everything, as per your guidelines, you do not own a darned thing. When we can see other politicians elsewhere who have profited, it is not necessarily because they have had shares or owned something. If somebody wants to slide something in your pocket and you are willing to accept it, you may not own a darned thing in the world but if you want to accept that \$10,000 they may want to slide in your pocket you are still making a profit. That is what I am telling you. It is not going to change. If somebody wants to be dishonest about it, even if they get rid of every damned

thing, according to your strict guidelines, there is still the pocket. But we have never seen it; we have never had concrete proof of any of this happening here in God knows when, according to our witnesses, and I know they are telling the truth.

If they are going to be dishonest about it, they will, no matter how much they own. I think of some of the wealthier members in the House, from what I have seen of them, having worked closely with them, they are very honourable people to the point that I have asked them, “Why are you doing this, for Pete’s sake?” Most of the members here are actually losing money as opposed to making more money than before. That is not my case, but I have come to realize that most people are losing money. That is a fact; not an opinion, a fact. If the opinion out there is that we are making more than before, well, whose fault is it? Even if you did this on a volunteer basis with no salary whatsoever, there would still be the cynical few who would think you are making a fortune at this.

**The Vice-Chair:** Mr White, because what we are reading here is what Susan White has—

**Mr White:** We are not that close.

**Ms Swift:** It is out, oh no.

**Mr Poirier:** You were not too swift.

**The Vice-Chair:** Susan Swift, I apologize—what Susan Swift has got from the witnesses, possibly what you are asking us to add on might be better under discussions and recommendations than under a certain paragraph.

**Mr White:** If that were the case, perhaps we could amplify it a little so it is clear, but I am sure I could leave that to Susan’s good skills.

**The Vice-Chair:** Now that we have moved on, is there any further discussion on paragraph 3? Seeing none, can we now move on to paragraph 4, please.

**Mr Winner:** I have no objections to this paragraph.

**Mr Poirier:** I like what I have read in it so far.

**Mr Mills:** I like that. I never thought you would be satisfied with anybody.

**Mr Poirier:** That is because no matter what you will do you will never, ever satisfy the cynics.

**Mr Mills:** I agree that you will never satisfy them.

**Mr Fletcher:** Looking at the last sentence, the guidelines may even serve, “On the assumption that politicians will participate in improprieties unless the strongest rules....” Can we change that “will” to “may.”

**Ms Swift:** Yes.

**Mr Fletcher:** “Will” sounds like we are going to. “May” means we may not.

**The Vice-Chair:** Is everybody okay with that change?

**Mr Poirier:** Should that be in there? I do not understand that last sentence. What are you trying to do with it, please?

**Mr Fletcher:** Changing the word “will” to “may.” In fact, I am going to change quite a few of the “wills” to “mays” throughout this whole thing. “Will” is a bit too strong.

**Mr Poirier:** Yes, but where does that come from, Susan, the last sentence? Are you again quoting other witnesses?

**Ms Swift:** That is attributing it specifically to Mr Sweeney. That was Mr Sweeney's remark; I remember that one quite clearly.

1730

**Mr Poirier:** Maybe we should repeat that this was a witness's opinion, okay? If you are going to be quoting witnesses, you have to repeat it all the time. Unless you do that, it appears that this is what the committee thinks. There may be some places where the committee thinks something and that will be clear, I guess.

**Ms Swift:** Yes. It was just stylistic that the sentence preceding it said he was arguing. The sentence before that said one witness suggested. But certainly I can make that attribution clear.

**Mr Poirier:** You could start the sentence by saying, "Another witness feared that the guidelines," right? That would be factually correct. Would you be agreeable with that sentence, to start the last sentence by saying, "Another witness feared that the guidelines"—?

**Mrs Mathysen:** Or "this witness."

**Ms Swift:** It was actually a different witness from the statement preceding it.

**The Chair:** That sounds good. Can we have that amendment built in?

**Ms Swift:** Yes.

**The Chair:** Any further discussion on that paragraph?

**Mr Poirier:** Yes. How about that aspect of, "politicians will participate in improprieties?" Did I not hear you, Derek, mention "may?"

**Mr Fletcher:** "May." Going back to page 3 of the other one, what Mr Sweeney did say is instead it should be assumed that improprieties could occur and ways to deal with it if it does occur.

**Mr Poirier:** Are you talking about this paragraph here?

**Mr Fletcher:** This is the other page that has the witnesses.

**Mr Poirier:** Okay. All right.

**The Chair:** Are we then in accord with that paragraph, as amended? Fine. Moving on, guidelines. Again, we are talking about essentially the purpose issue.

**Mr Mills:** We are going to come back and write the recommendations, are we, after each one, or are we going to do it after each part?

**The Chair:** I believe we should be looking at our discussion and recommendations further. What we have is essentially a summary of what the witnesses have said and not what our deliberations are. Recommendations? Discussion?

**Mr Poirier:** How about your point, Mr Chair, when you suggest that maybe we should discuss your point at the end here, the point that you wanted to bring forward. Did you want to have it brought forward at this moment or what?

**The Chair:** Susan, could you read that back in whatever form we have it?

**Ms Swift:** You have more confidence in me than is warranted, Mr Chair. This is as best as I can get it. "Recently, it has become apparent that the issue of conflict of interest is a complex issue and the public may not fully understand it. For example, there is a lack of distinction between a conflict of interest—that is, a real or potential gain for a politician's private interest from his public office—and the adherence to conflict-of-interest guidelines, where there may not be any private gain."

**The Chair:** Perhaps an extra sentence—"plus there is a confusion between conflict of interest and conflict-of-interest guidelines."

**Mr Fletcher:** I am just wondering if we are here to make a distinction between the possibility of a conflict of interest or the perception of a conflict of interest. That may be in somewhere else down the road. I am not sure if it belongs in the purpose of the guidelines to make that distinction. I think the guidelines are trying to prevent the possibility of a conflict of interest, not to make a distinction between the possibility of a conflict of interest—

**The Chair:** I think what we are trying to do here is to look at the very specific question, "Are the guidelines necessary?" and if they are, as we have become aware, there are some areas where they are obviously necessary and other areas where they will not be able to catch all the public perception. So I think the issue is still relevant.

**Mr Morrow:** Is Mr White's add-on not covered or being covered in the guidelines Susan has written out?

**Ms Swift:** In the draft report? No, I do not think the issue has been addressed in that way. I do not make the distinction, and in fact my recollection of the evidence was that no witness made any distinction between compliance with the guidelines as opposed to having an actual conflict. That distinction was not made by the witnesses and is not made in the report.

**The Chair:** Why do we not just vote on whether you want to include that?

**Mr Mills:** I would vote that we leave it as it is.

**Mr Morrow:** I second that.

**The Chair:** Leave it out? Fine. Further recommendations?

**Mr Morrow:** Mr Mills moved something before that possibly he might want to add in now.

**The Chair:** I am not sure, because what we are looking at here is a summary. This is what the witnesses have said and this is the discussion we have heard. The committee feels X. We feel it is important, regardless of X or Y—

**Mr Mills:** To say something else.

**The Chair:** —to have it, but what are our committee's recommendations here in terms of the purpose?

**Mr Mills:** And that point in time has not come, has it? That is now?

**The Chair:** Yes. "Are the Guidelines Necessary?"

**Mr Poirier:** I see two different things coming up now: committee discussion and committee recommendations. I presume we discuss first and then we make the



recommendations. What you have summed up so far is what we have heard the witnesses say. What we have to insert here is our discussion among committee members as to what we feel about this, and then collectively we will make the recommendations after having finished the discussions. Right?

**Ms Swift:** That is true. I guess the way this meeting should be regarded is that it is in a sense the justification for the recommendation. "Having heard the evidence, the committee felt X, Y and Z and therefore, logically, recommends A."

**Mr Poirier:** Logically?

**Ms Swift:** Logically coming from Z to A, around again in circles. Yes, that is right. Exactly.

**The Chair:** How does the committee feel about "Are the Guidelines Necessary?"

**Mr Morrow:** I would add Gord's earlier motion now, at this point.

**The Chair:** After we hear what the committee feels.

**Mr Poirier:** Gord, what you wanted to bring forward was a recommendation, right? Maybe it would not be the time to do it now. First we do our discussion, and once we agree that we have finished our discussion, then you or any of us can bring forward recommendations. All right? Are you comfortable with that?

**Mr Mills:** Yes. I feel this committee has a responsibility to restore public confidence in government and I feel this can be done by including everybody in these guidelines. Why I say that is that it says here, "In order to restore public confidence in government, it is necessary to impose upon cabinet ministers and parliamentary assistants more stringent standards of conduct," etc. I think that falls short of the mark. We only have to look around at this government, which has 74 members, to see that it does not take long before everybody is involved either in the cabinet or as a parliamentary assistant. We see that happening now; somebody could come into this government as a backbencher or a member with no particular duties and then suddenly, through the numbers game, have it thrust upon him that he is now a parliamentary assistant. What I am saying is that if there is a guideline applicable to some members of the government, why should that guideline not be applicable to everybody, based upon the fact that we now have 74? I believe in your last government you had some 90. Most of you, I presume—

**Mr Poirier:** God, no. Not when you are 94.

1740

**Mr Mills:** You did not. Well, you just look back. If the next government, heaven forbid, is of lesser numbers, everyone is going to be involved in something. I really do not quite understand why it is necessary to impose the stringent rules upon just cabinet ministers and parliamentary assistants. I think the perception of the public is that all politicians, bar none, need watching. If we address that perception of the public by saying that all these guidelines are going to be applicable to everybody who is elected, the public hopefully will get the message and say that it applies to all. I realize there are cynics out there and we will

never, never, never satisfy those people. I realize that. I do not look at anything too much. A guy said to me Saturday, "What's it like to be a millionaire?" It is crazy.

We must address and try to come to grips with that confidence by the public, which seems to be so sadly lacking. I think the shenanigans in the House this last couple of weeks reinforce this lack of confidence by the public, because people are fed up with politicians. I would like to be part of making some standards of conduct that will hopefully try—and I am an optimist—to improve that in the long run. That is why I am speaking to that.

**The Chair:** You have a recommendation. We have the germ of the resolution. I am wondering if we want to amplify upon that resolution.

**Mr Mills:** I can read the resolution if you want.

**The Chair:** No, no. I think it is transcribed.

**Ms Swift:** Yes, I have it. There is just one thing I wanted to mention, and this is just a structural thing you should think about if this is the recommendation you want to make now. In part II of the report, on page 9, I have structurally dealt with the idea of to whom the guidelines should apply. I have listed several classes of people that witnesses raised. If you want, I can certainly move this section or take it out of there. If the recommendation is to be made here at the beginning, we should deal with whether you want to conclude that now or what you want to do with that section, basically.

**Mr Poirier:** It would seem more appropriate that what you would like to bring forward would apply in that part II on page 9 rather than under the title "Are the Guidelines Necessary?"

**Ms Swift:** You may want to do it differently.

**Mr Mills:** It seems to me that perhaps we should do that.

**The Chair:** Mr Mills, are you in agreement with that?

**Mr Mills:** Yes. We are just going to ask for a couple of seconds here.

**Mr Fletcher:** I am just going back to the other section that was giving the summary of witnesses. On the question of whether the guidelines should be extended to apply to all members of the Legislature, Mr Rae had said: "Additional guidelines should apply to all members. However, complete divestiture could not and should not reasonably be expected to apply to all members. It would be unduly difficult and an undue imposition on a member."

Yes, I can understand the guidelines applying, but when we come to divestiture and disclosure perhaps that is where we can make a change so that there is not undue imposition on a member.

**The Chair:** Are you still referring to the section on page 9?

**Mr Fletcher:** Yes. That is why I agree with what Mr Mills has said.

**The Chair:** Do we have anything further in terms of discussion, recommendations with regard to this preamble or the purpose of the guidelines? Are they necessary?

**Mr Mills:** Yes.

**Mr Fletcher:** Yes.

**Mr Poirier:** With all due respect, I will have to have a dissenting opinion. They are thoroughly unnecessary. Even though you have not known me long enough, time will demonstrate clearly that they will not change the perception, because you cannot control that. Your own norms, your own integrity, you can control only those. No matter what you do, the perception will elude you. You will not control that and that is what you see happening in the House. What all three parties are doing in the House is going to splatter mud on all of our faces. There are many other ways than these stricter guidelines to reimpose public confidence in politicians.

By imposing these guidelines, and especially if you are going to have this aspect of undue hardship, where the person who will decide what is undue hardship will probably be called upon to make exceptions, if that person, whom I presume to be the Premier, makes one exception, what do you think the perception will be about why he is making an exception for that one person? That will be public knowledge.

**Mr Mills:** I think he is going to.

**Mr Poirier:** That is right. Would you want to be that one person the Premier makes an exception of? When that person you mentioned last Saturday said, "How does it feel to be a millionaire now?" I do not know how you felt when that person said that, but I know how I would feel.

I know for a fact what people have been telling me about what they perceive I and other parliamentarians made in my last six and a half years. You can rage every time you hear this being thrown at you but like I said, when you finally stop being a member of Parliament for whatever reason and whenever that is, from what I know of you—and I respect all of you—you will walk out of here proudly with your heads held high, knowing that hundreds of thousands of Ontarians thought you had been a garbage bag and that you had filled your pockets full of the green stuff. But you will know better, regardless.

I have developed a term for this after being insulted more than once in six and a half years by people who still perceive we make a lot of money every time we can fill our pockets, legally and illegally. I refuse to become what I perceive to be—excuse me if the term is a bit hard—a political prostitute to the unrealistic expectations of a lot of the people out there about what we should be and must be, including the salary, integrity level, divestiture, disclosure, you name it. I refuse to be a political prostitute and bend down and beg: "Anything you want, anything you think I should do or must do I'll do. You won't be as cynical and you'll perceive me to be a moron as a person."

The hell with them. We are all honourable members. We all go to bed at night knowing damned well we did it out of a commitment for these close to 10 million people, 130 of us in here, and I will be damned if I will bend for one cynic who tells me, "Because you did not divest, I suspect you of filling your pockets or profiting from your position." After six and a half years of 110 hours a week making \$8 an hour, I will be damned if I am going to bend

to a cynic who says I am filling my pockets because he or she has decided to perceive that.

1750

I honestly believe that you are bending down to that, and you should not. To be a member of Parliament is an honourable profession, and they are all honourable members. Instead of making tougher guidelines, all of us should be standing up, especially when some of the members of the press at Queen's Park write about the so-called Queen's Park perks. Like hell, perks at \$8 an hour. I will be damned about the perks. Some of us who sit on committees here will probably make about \$2,000 or \$3,000 a year that unfortunately somebody decided a long time ago was not taxable, and that we would get an extra per diem when the House does not sit. Who gives a damn about that?

I agree with you that we should get a straight salary and not have that, but because they write that we have Queen's Park perks, I am going to feel bad about myself as a parliamentarian? I am going to feel less honourable? I am going to feel more vulnerable to some of the cynics? The hell with them. You should be proud of what you are. We should be proud of all 130 members. We should be proud of all those of whom, for the last 15 or 20 years, it has been said that nobody has been able to find a dishonourable member, damn it.

I think you are going too far, and once you do it—and of course you are going to end up doing it—you just wait and see what else they are going to ask of you, because they still will not think that we are honest enough, some of them. You just wait and see what they are going to ask of you next. I honestly do not want to think about it.

If you include that, and if I had a century farm—I do not know how many of you are from a farm background. I have a biological farm that, in its entire history, has never had anything chemical or toxic on it, not even chemical fertilizer. You would not expect me to divest myself of a biological farm, because if I sold it, this would be a horrible time to sell it, for one thing, and if I turned around and wanted to find another biological farm like that, even if the Legislative Assembly gave me \$500,000 to find one afterwards, I would never find one like that. Do not expect members to do that.

**An hon member:** I do not think they do.

**Mr Poirier:** If you make that for the hardship thing, how would I feel if I were the only one for whom the Premier would make an exception under hardship? You want to make me feel like going under a rug? No exceptions for you, but one for me? Why? Is it any lesser hardship for you than it would be for me?

There is no way I would let go my farm. I busted my buns to make it what it is, and as an environmentalist, I would not sell for any reason that super, biological farm. No way. To try and please those cynics out there? There are enough people who know that you and you, David, Irene, myself, anybody can serve honourably as a member without divestiture, with full disclosure. I have nothing to hide, none of us have anything to hide. Put all the cards face up on table. If that is not good enough for them, the



hell with them, and I say that on public record. They want to perceive us as being honourable members. I know we are all honourable members until somebody, somewhere has a mandate to show me otherwise, and you are going too far.

**Mr Winninger:** I agree that Mr Poirier's line of reasoning has a certain seductive appeal to it. However, I think it is flawed. We cannot determine public perception, but we can influence it.

For the longest time, politicians were placing their assets in so-called blind trusts. Often it was perceived that these trusts were not so blind, and in some cases a conflict emerged and ministers were compelled to resign—even in our Legislature, not just in other provinces.

No one suggests that because politicians receive perks they are necessarily dishonourable, but by introducing these kinds of conflict guidelines we reduce the potential for perceived conflict, and that is where the validity of these guidelines, I would submit, lies.

Certainly exceptions have to be made from time to time, and that is provided for under paragraph 15 of the guidelines. Mr Poirier gave a very compelling example of where that kind of discretion might be exercised, in the case of an organic farm, even in the case of a non-organic farm. We want to maintain and preserve farm land. That has been a policy of our party, both in and out of government, and certainly that would be a very convincing reason why an exception should be made.

I think my friend would agree that exceptions have to be made to any rule, but that does not necessarily mean you do away with the rule entirely. To be able to influence the public perception and reduce the potential for conflict I think tends to enhance our stature as parliamentarians rather than to negate it. For that reason, I would add that the conflict guidelines did not go too far. It may be that in some cases hardship can be proved, and in those cases exceptions have to be made.

I think we all benefit from an untarnished image. These parliamentarians in the past who were forced to resign their seats because of a perceived conflict will no longer have that potential, simply because when an exception is made, the potential conflict will have been given a thorough airing. It will not come as a surprise to the public, the way conflicts have in the past. That, I would submit, has diminished to a very large degree the high image you suggest politicians should have.

It is all very well to say you are innocent until proven guilty, but merely to say that does not mean there is not a duty incumbent on us to ensure that the public regards us with the highest possible regard. I would submit that when the public sees these guidelines and sees how this government has put these guidelines into effect, they can come to no other conclusion than that we are making an effort to purge ourselves of any conflicts we may experience now or in the future, and there may be some fallout from that.

We have already seen fallout from that, but maybe it is not such a bad thing that the conflicts commissioner has reviewed these allegations of conflict, and in each case that I know of, has come to a favourable conclusion that indicated that the minister should remain exactly where he or she was and is. I think it is a very healthy thing, and while I agree with some of your comments, I think we are better off with these guidelines in place than without, and that is my speech.

**Mr Poirier:** If I were, under the clause of undue hardship, allowed to keep my biological farm, I assume if I were in government again, I would have to forgo my possibility of ever being the Minister of Agriculture and Food. Do you know what I mean?

**Mr Fletcher:** You will never be in government again, so do not worry about it.

**Mr Poirier:** I have always loved somebody with a good sense of humour. After six and a half years, you will be very flexible too, believe me.

**Mr Winninger:** Forty years in the wilderness.

**Mr Poirier:** That is right, and even more wilderness. Maybe six and a half years from now, you will be right here. Who knows?

**The Chair:** With this short amount of time we can do one of two things: either adjourn immediately or at least come to a conclusion on this preamble. Lisa has suggested that we can, with unanimous consent, move on to perhaps finishing the next section as well, given the amount of time we have in front of us to conclude this report.

**Mr Morrow:** I am sorry, I cannot.

**Mr Mills:** I think some of us have to be somewhere at 6:30.

**The Chair:** Okay, so I suggest we adjourn until 27 May.

The committee adjourned at 1759.

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## Assemblée législative de l'Ontario

Première session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Tuesday 28 May 1991

# Journal des débats (Hansard)

Le mardi 28 mai 1991

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday 28 May 1991

The committee met at 1557 in room 151.

### POWERS OF ATTORNEY AMENDMENT ACT, 1990 NATURAL DEATH ACT, 1990

Consideration of Bill 7, An Act to amend the Powers of Attorney Act, and Bill 8, An Act respecting Natural Death.

**The Chair:** I call this meeting to order. We are here this afternoon to start with the first day of hearings in regard to Bill 7, An Act to amend the Powers of Attorney Act, and Bill 8, An Act respecting Natural Death, both of which were sponsored by Mr Sterling, who will be speaking to them first.

**Mr Sterling:** Thank you very much. I am going to be rather brief because the Minister of Health would like to make her presentation very shortly.

I want to thank the committee for putting aside the time and putting forward the necessary resources to advertise these two private member's bills, Bill 7 and Bill 8. I truly do appreciate that. I understand from the researcher and the clerk that over 80 different individuals and groups have responded to these acts. Therefore, that shows the interest in these two bills.

Advances in technology and medical science are such that life can now be prolonged almost indefinitely, but many people do not wish to be kept alive by artificial means when there is no hope for the future. I believe that individuals should have some say, some control, over what will happen to them in a medical sense and that these decisions should be made by the individuals when they are competent; that is, when they have their senses. These decisions right now are made by care givers or family members when patients can no longer speak for themselves.

Two Canadian provinces, Quebec and Nova Scotia, already have some laws recognizing the durable power of attorney and a living will. Also, 41 American states make provision for living wills and 50 for powers of attorney.

It is important to understand that these bills do not change our existing laws as to what a person can or cannot do with his life. Presently, any person who does not want to receive medical treatment can have such treatment terminated. Bill 7, An act to amend the Powers of Attorney Act, only transfers this right to another person and Bill 8, An Act respecting Natural Death, allows a person to state to the world the conditions under which he or she would want treatment terminated. This is referred to as a living will.

I would hope that the introduction of government legislation by the Attorney General and the Minister of Health yesterday will not weaken the importance of these public hearings. I would like to be able to assure those making submissions that their knowledge and opinions put forward would not be lost and that they will be transferred and fully considered if, for any reasons, these private

members' bills are not called for third reading. This is the first time in Ontario that there has been an opportunity for a public forum, public debate, whereby people will have the opportunity to express their opinion specifically on this kind of issue. It is a very sensitive issue.

At the time Bill 7 and Bill 8 were debated in the Legislative Assembly, Premier Bob Rae indicated to me his full support for this kind of legislation, as did all three parties of this Legislature, and I want to thank each and every member of the Legislature for his support.

I have indicated my willingness to entertain amendments to improve the legislation. Many of the deputations have already presented me with many good ideas for improvement. I believe there is a real opportunity for members of this committee to participate in bringing about meaningful change, change that will enhance our quality of life.

Back in 1983, when I was Provincial Secretary for Justice in Mr Davis's cabinet, I carried an amendment to the Powers of Attorney Act which enabled people to give their power of attorney over to someone else in the case of mental incompetency. However, these past changes dealt only with assets or business matters, property matters. Bill 7 and Bill 8 provide the same kind of protection that your opinions and choices will be honoured even if you become incapacitated, but deal with the rights dealing with medical treatment.

I believe most people fear death far less than they fear the loss of control over their existence. They fear a loss of autonomy. This is something which often comes with increasing years, with illness or purely by accident.

Individuals should have some control over the quality of their lives, particularly if that life is dependent upon artificial means. Being able to make these decisions when one is capable of doing so will provide comfort and a certain sense of security to individuals, to families and to the medical professions. I believe Ontarians should be granted the freedom to make their own decisions on their future health care.

The public will no doubt be somewhat confused by the introduction of bills yesterday by the Minister of Health and the Attorney General. The Legislature really has two options at this point in time: (1) to embody the concepts of Bill 7 and Bill 8 in the government legislation which was introduced yesterday or (2) to use those parts of the government legislation which are attractive to the committee and incorporate them into Bill 7 and Bill 8.

It is my understanding that the Attorney General and the Minister of Health will be comparing and corresponding sections of their legislation with Bill 7 and Bill 8 during their presentations.

I believe that for the present time we should take option 2. If option 2 was the final decision of the government, it would then be necessary for the Attorney General



and the Minister of Health to delete from their legislation matters dealt with in Bill 7 and Bill 8 in a later committee hearing when considering their legislation.

The reasons I think we should continue on the path in dealing with Bill 7 and Bill 8 are as follows. First of all, the Legislature has given second reading to Bill 7 and Bill 8, which is not the case with the government legislation. Second, the standing committee on administration of justice is now charged with considering Bill 7 and Bill 8 and, most important, the committee has invited the public to comment on Bill 7 and Bill 8. It would seem unreasonable at this time to back away from carrying on with Bill 7 and Bill 8.

If in the final analysis the government decides to pass its bills into legislation—or in essence choose option 1—it can do so by just leaving Bill 7 and Bill 8 on the order paper until the end of our session to be called for third reading. Then they would—pardon the pun—die a natural death.

I would, however, like members of the committee and the government to keep an open mind as to which route is best for the public of Ontario. Quite frankly, I am not certain which tack is better at this time.

I have always believed as a legislator that laws should be written for the people and not for lawyers and judges to interpret. This is sometimes difficult to achieve because of the necessity to use unfamiliar language, sometimes called legal jargon, and because certain sections of a piece of legislation might intermingle with or rely on other sections of the same bill or companion legislation.

Bills 7 and 8 were written for the average Ontarian and were intended to stand on their own. I thought that Bill 7, An Act to amend the Powers of Attorney Act, would be an addition to the existing act, which is in every lawyer's right-hand drawer. I envisage that Bill 8, An Act respecting Natural Death, will be the additional basic piece of legislation kept in that right-hand drawer and on the shelf of every public library.

Therefore, it may not be in the public's best interest to bury the concepts of a living will and a durable power of attorney in a Substitute Decisions Act, a Consent to Treatment Act or a capacity statute law. It may be of interest to the public to have living will legislation stand apart and on its own. This is an issue which I think we should think about during the hearings. Ultimately, it will be decided by the government, as it has the ultimate power in dealing with my legislation.

Some might think I would be upset with the introduction of the government bills yesterday. I tell you most sincerely, I am not. It is the end result that I am concerned about. I want to personally thank the Attorney General and the Minister of Health for introducing their legislation yesterday. It would be unfair to this committee and members of the Legislature for us to operate in a vacuum. I believe we can focus discussion on issues and use the knowledge of both pieces of legislation to find the best means of permitting Ontarians the freedom to make their decisions for themselves with respect to health care.

**The Chair:** Thank you very much, Mr Sterling. Can we forgo initial statements on this matter and allow the minister to speak?

**Mr Mills:** Sure.

## MINISTRY OF HEALTH

**The Chair:** I would like to welcome Frances Lankin, the Minister of Health. As soon as you are ready, Ms Lankin.

**Hon Ms Lankin:** I have with me Gilbert Sharpe from the Ministry of Health, who will be of assistance, I am sure, if there are questions with respect to the consent legislation that was tabled yesterday.

Let me start off by making it very clear that I applaud Norman Sterling's efforts to bring these very important matters regarding personal rights to the attention of the Legislative Assembly. It is a very important initiative and one in which he has had a long-time dedication, a personal and a political commitment.

I think we would all agree that we live in times when each of us is acutely aware of the need to have control over our lives, and respect for the dignity and autonomy of the individual is a goal we must all strive to achieve.

The principles embodied in Bill 7 and Bill 8 are very important ones. I am, however, concerned that the scope of these bills is too limited, that they do not offer proper protections for personal autonomy and that they do not provide a comprehensive system of checks and safeguards offering the widest range of considerations for people's needs and rights as patients.

I appear before this committee having only yesterday, as you are all aware, along with my colleague the Attorney General, introduced bills that do regulate consent to health care and substitute decision-making. The government announced in December and reaffirmed in April that it would be bringing forward such legislation. In my case, it was the Consent to Treatment Act and, in the Attorney General's, the Substitute Decisions Act.

These bills not only embrace the principles of Bill 7 and Bill 8, they go far beyond in ensuring proper protection for individual rights. Both the substitute decision-making and consent to health care legislation were developed meticulously over time, with care and attention to detail.

The content of both reflects a broad consultation, both within and outside government. Both are components of a larger package, the third part being the Advocacy Act, which was introduced 18 April by my colleague Elaine Ziemba, Minister of Citizenship. Together, these three legislative elements make up a complementary whole that will offer full consideration for as many of the nuances of patient rights as we could discover.

Before I describe for you briefly the highlights of the new Consent to Treatment Act, I would like to reiterate that there has been a very complex and exhaustive process under way in government for a number of years to prepare this legislation. It certainly pre-dates the interest of this particular government and the public interest. The Legislative Assembly's interest has been long-standing.

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We believe that each element is part of an interlinking system to protect people legally, to act for them responsibly and to ensure accountability for patient rights in our health care system.

They will help us ensure that across our province, wherever health services are provided, people will be able

to make well-informed health choices, including living wills. Further, this legislation ensures that the rights of the most vulnerable members of our society will be fully protected.

The consent to treatment legislation we have proposed does, for the first time, very clearly define the rights and responsibilities of health service consumers and practitioners as well as substitute decision-makers.

Until now, no legislation has dealt clearly and comprehensively with consent to health services. Previously, both the Mental Health Act and the Public Hospitals Act contained some consent provisions for patients in hospitals. Outside of the institutional setting, no specific legislation governs consent.

This is a serious consideration as the health care system evolves into one based more on community health. We now have no consent provisions for community health settings or for long-term care settings such as nursing homes, nor is there, at the moment, anything governing consent in one's own home.

In other health care settings, what prevails in consent situations is common law. Common law rulings stemming from court decisions are not widely known and it is extremely difficult for the ordinary person to enforce his or her rights through common law.

So the new legislation introduced by the government yesterday, by replacing earlier consent provisions in other acts and by ensuring consistency across the province, answers our very real needs, needs for clarity and consistency that have been articulated to us by consumers, providers and interest groups. In creating our three-part legislative practice, we have attempted to respond to their suggestions.

In essence, the new Consent to Treatment Act affirms everyone's rights to be fully informed when making a health care decision, enables anyone to express advance wishes on health care as in a living will, and specify much more than just what would be refused in the case of terminal illnesses. It also ensures that decisions made on behalf of mentally incapable people are responsible and respectful of their rights.

In preparing this legislative parcel, we were able to draw on the model of experience that played out as we made amendments to the Mental Health Act in recent years. In the legislation introduced yesterday, we have included many statutory rules on consent to treatment in psychiatric facilities, including defining mental competency to make treatment decisions.

Others are: consent must be informed and voluntary; provision of authority for a family member to make substitute decisions for a mentally incapable patient when there is no court-appointed guardian; provision for a person to appoint a substitute decision-maker in advance and the option of placing conditions on the decisions made by that person; provision for a public official—the official guardian—to act as a substitute decision-maker of last resort; the right of review by an independent review board of a mental incapacity finding; written notice of the right of review to a patient found incapable, reinforced by a program of independent rights advisers who visit such patients; many due-process protections for patients in the review process, such

as the right to all information that is before the review board, the right to a hearing, and the right of appeal to court from the decision of a review board.

I have two reasons for mentioning these elements of the Mental Health Act. One is that there was a considerable amount of work and effort put into details of the act at the committee stage by members of this government. Their input broadened and strengthened the content of the act. The other reason is that the process was a learning curve that helped to shape this recent consent legislation, ensuring the full consultative undertaking in its development.

So, to reiterate, what exist now are extensive provisions respecting consent to health services in the Mental Health Act, very limited provisions in the Nursing Homes Act and regulations under the Public Hospitals Act. These provisions apply only to the health care setting specified in each act and are not consistent from one act to another.

A health service provider or a patient may be subject to differing rules of consent depending on the health services being provided and the setting in which the health services are given.

The Mental Incompetency Act, the rarely used existing statute for guardianship, provides for court appointment of a committee for substitute decision-making, but it does not deal specifically with health care.

In addition, the provisions in most of these acts do not adequately address the issues that arise when consent to health services is required for an individual who is mentally incapable or for a child. As well, questions arise about ensuring that patients will be informed of their rights and then ensuring that those rights are protected.

The need for comprehensive and consistent legislation on consent to health services continues to exist. The importance of such legislation and the need for it was once again raised during discussions over the past several years on proposed reform of guardianship legislation.

Concerns about liability have led to situations where health care professionals hesitate to examine or treat patients who need health services. Consent to health services legislation is necessary to improve the delivery of health care by establishing clearly the rights and responsibilities of patients, health service providers and substitute decision-makers.

That is some of the background and the comprehensive new directions that we are taking in the government's approach to advocacy, consent and substitute decision-making. That brings me to an examination of the specifics of Mr Sterling's proposed legislation.

I believe we can all agree that the paramount principle of any consent to treatment legislation should be the inviolability of the patient's rights and his or her autonomy. Legislation must provide safeguards for the rights of the relevant players while also balancing concerns about the ethics of life termination or withholding treatment. Similarly, the legislation must be broad enough to ensure the patient's wishes are respected as closely as possible, while still permitting alteration in the event of unforeseen medical advances or changes in the patient's condition.

One of the central issues in consent legislation is the rights of the patient when he or she is incapable. The area of living wills raises this problem. Once a patient is deemed



incapable, the role of advocates, substitute decision-makers and review boards come into play in our legislation. Therefore, by necessity, any legislation dealing with living wills must acknowledge and define these players' roles and rights and complement a package of related legislation governing these persons.

Bills 7 and 8 have been successful in highlighting the importance of the need for legislation on living wills and consent to treatment in general. However, the bills do lack a number of essential safeguards to ensure the protection of the patient, other relevant individuals and concerns of the committee members.

Let me briefly spell out what we consider to be the major shortcomings of the Natural Death Act.

Its provisions affect terminally ill patients only and ignore the permanently unconscious—an example is the Karen Quinlan case—people who are temporarily incapable of making a health care decision or people who have become permanently incompetent. These limitations are far too restrictive.

It seems to come into effect when it enters into the physician's domain. Such a document should only take effect when a person is declared incapable.

This act ignores other health professionals who may in fact be the only ones at the scene when the terms of a living will first come into play.

The most recent wishes of a patient do not take precedence over the contents of a properly executed living will unless the living will is first properly revoked. In other words, if you have changed your mind, if you are in a situation where you have indicated to family, friends or relatives that there has been a change in your feeling about this and then all of a sudden you are unconscious or you are incapable, this legislation is completely inflexible in dealing with that situation. If you have told your relatives, they have no standing. This is despite the fact that the kind of person who is most likely to be available in an emergency is a relative.

There is no role for a substitute decision-maker or advocate, and they are important players in health care decision-making and the protection of patients' rights.

No provision has been made to set up a review board to consider what you could call tricky cases; for example, where a living will is vague or not exactly on point or where the illness is now curable and the patient is unable to express his or her wishes and thus not able to change a living will.

Once invoked, there is no way to deviate from the terms of the living will to accommodate medical or technological advances.

There is a significant failure to provide a way for a person who has been declared lacking in capacity to challenge that declaration.

It ignores the rights of mentally competent people under the age of 18. They should have a say about their future treatment if they become incompetent.

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To place the shortcomings of Bills 7 and 8 in juxtaposition with the benefits of the legislation introduced yesterday, let me point out that the Consent to Treatment Act contains

several provisions protecting the incapable patient. These safeguards are extremely important because of the sensitive and complex nature of the legislation.

Procedural safeguards include the advice to a patient by an advocate of the effect of the finding of incapacity and the right to apply to the review board.

More recent wishes or instructions with respect to treatment apply.

Consent on an incapable person's behalf provides that a substitute decision-maker must give or refuse consent in accordance with the wishes of the incapable person. If no such wishes are known, the substitute decision-maker must act in the best interests of the incapable person. Various criteria to be considered when determining the best interests of the person are set out, including the potential benefit or lack of it arising from the proposed treatment and the patient's value system.

There is provision for advance instructions consenting to treatment to come into play when a person becomes incapable. In addition to refusing certain treatment, the incapable person may also specify that a particular treatment is acceptable. This applies to all health care, not just to termination of life.

I have not detailed all the provisions in the act, but I would like to mention, in wrapping up, a number of features of the review board.

As specified in the act, the review board may clarify instructions or wishes of an incapable person at the application of the substitute decision-maker to ensure that the person's best wishes will be honoured.

A substitute decision-maker can apply to the board for permission to consent to a treatment, even if this is contrary to the wishes of the incapable person, based on what the person would likely wish now. This is very important. It permits treatment because of medical advances not in existence when the wishes were first expressed.

The review board provides procedural safeguards in situations requiring an advocate to meet with the incapable person and explain his or her rights.

The current review board system under the Mental Health Act will be expanded to apply to all health care settings and services. Both this added protection and the expanded role to be played by advocates are essential safeguards to ensuring individual autonomy and protection.

These, then, are examples of the very difficult and intricate mechanisms that must be established to balance the rights and responsibilities of individuals in circumstances where they are no longer capable of speaking for themselves.

As I said earlier, while decisions in living wills about terminal illnesses are an important facet of our legislation, it is but one example of what has become known as advance directives for making decisions about one's own health care.

I want to once again compliment Norman Sterling for bringing these important matters forward. His determination has culminated in the committee hearings, which will forward the discussion and the debate on the subject and provide valuable information for all parties involved in the issues.

If I could just momentarily deviate from the text before you, I will say in response to the comments that you made that I think it is important that the legislation was tabled in

advance of these hearings and that we fully intend to take advantage of the information that will be brought forward in response to the bills that you have set out. The groups that have indicated and expressed desire to comment on these points I am sure will take into account some of the concerns and balances that we have raised, because many of those reflect the consultations we have had with those various groups. I think the kind of informed discussion that will go on here at the committee will be very helpful to the government with respect to not just this piece of legislation but the Attorney General's legislation that he will be speaking about next.

I want you to know that members of the staff from the Ministry of Health will be taking very careful note of the proceedings over the next several weeks, and I have asked to be briefed on the presentations day by day as they unfold.

Our ultimate goal, and I think this also speaks to what you raised in your introductory comments, Mr Sterling, is to provide the best set of circumstances to safeguard the rights of the individual in a health care setting. It is not in any sense a partisan battle of whose legislation gets passed first. It is a matter of putting together the best piece of legislation that will cover all of the rights and the interests in these circumstances.

As I have indicated, I thank you for the work you have done on this issue. I hope that, together with the discussion that comes in response to your bills at this committee, our comprehensive legislation will be able to be on the books within the next year.

**The Chair:** Thank you, Ms Lankin. Perhaps you would not mind staying for another 10 minutes for questions. Mr Sterling.

**Mr Sterling:** Thank you very much for coming to the committee. I appreciate the importance you give to these two private member's bills. Your act, the Consent to Treatment Act, does not specifically deal with the advance directives, that is, a living will or a power of attorney, but somewhat sets the stage for those two documents, as I understand the Attorney General's legislation, which he is going to talk about in a few moments. Is there any reason why Bill 7 and Bill 8 could not be amended to dovetail into your legislation?

**Hon Ms Lankin:** I think I will also ask Mr Sharpe to join in and to clarify and perhaps provide you with a fuller response. You are quite right that there is an intricate relationship between all three pieces of legislation and that the formalized procedure for the living will rests within the Substitute Decisions Act. The Attorney General will be speaking to that next on your agenda.

Much of the groundwork is set within our legislation in the sense of the directives to health care givers in what they must respect: the issue of advance directives, the ability to have some flexibility around a concrete, written document and what might happen in the meantime if there is a change of mind, so I think there are very important links; I think also with respect to the process of appeal and the review board and many of the things that are set out there that deal with issues that are fundamentally important, not just with respect to a living will but advance directives with health

care in the case of temporary incapacity, for example. It is important that those be worked in.

**Mr Sharpe:** The only thing I might add to what the minister says is that the consent bill in section 13 does deal with the advance directive concept, and of course the important issue of autonomy and respecting one's wishes must be embodied in both statutes. The Substitute Decisions Act is referred to in subsection 13(1) of the consent bill. I realize the consent act may not be in front of all of you, but that is where the substitute decisions personal power of attorney is brought in.

Subsection 13(2) goes on to talk about how wishes with respect to treatment expressed more recently would override the actual personal power of attorney that might formalize a living will, but in subsection 13(4) the provision says that wishes with respect to treatment may be written in the prescribed form, so the whole notion of advance directives, as the minister has indicated, could be embodied in a form under the consent act, which might be specifically addressed to just the terminal illness phase, but it also might be much broader.

For example, a patient suffering from chronic schizophrenia who does not want a certain type of antipsychotic medication—he does not like the side-effects—when he is out of hospital and able to do so, might want, under the consent act, to express his wish in advance that if he is rehospitalized, he does not want that medication. So it is a broader concept, but one also could restrict what one says in the form under the consent act to living-will-type circumstances, with all the added protections the minister has referred to.

**Mr Sterling:** I guess my only concern is that I know a lot of people have looked at this and the rest of it, but at some point lawmakers have to consider as well the simplicity of the concept they put forward. My concern is that by meshing so much together, are we in fact taking away from the people the understanding of what normally would happen in normal circumstances, and that is, you go to your lawyer, you draw up your last will and testament, you draw up a power of attorney to deal with the situation when you are out of the country or should you become incompetent. The lawyer also says to you, "Do you want to draw up a living will and do you want to extend your power of attorney for a situation where you would not be able to give direction as to your medical care?"

By meshing it into a very complex piece of legislation, are you going to encourage or discourage people to take the step—that is one concern I have—or understand what these documents do? Because as you complicate the process, sometimes you defeat the process as well. That is my only concern. I do not take away from the intent of trying to cover every situation, but as a lawmaker you cannot always cover every situation.

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**Hon Ms Lankin:** I think that is a very valid concern and I am sure people will address that through the course of the committee hearings.

What I hope in fact will happen as a result of the introduction of these three bills is the exact opposite. By



virtue of having the consent-to-treatment legislation, we will codify the responsibility that has existed in common law and in certain pieces of legislation. But in common law the responsibility of health care providers is to inform all their patients with respect to the treatment and alternatives, to allow that person to give informed consent.

I think we will in fact be in a process of educating health care consumers in providing an opportunity for them to make decisions in an easier way and a more understood way. I think the way in which we educate, the way in which we publicize, the kind of forms, those sorts of things need to be very accessible, and I think that is an important point that you raise.

I also think the issue of tying it together with the advocacy legislation and rights advisers, in fact, also increases people's real opportunity to exercise their rights under the legislation, which without that might lead to people's having the right in law but not having the ability or knowledge to exercise it.

**Mr Sterling:** On the first question I asked, I am not sure I got a clear direction from Mr Sharpe. As I read your critique, and from what I know of your bill and reading section 13, there is nothing within your legislation that would prevent the committee from amending Bills 7 and 8 to dovetail with this particular piece of legislation. It might take considerable amendment, but there is nothing to prevent this committee from doing that.

**Mr Sharpe:** No.

**Hon Ms Lankin:** No.

**Mr Poirier:** On page 3, I look at, "affirms everyone's right to be fully informed when making a health care decision." At the top, the very first one at the top.

**Hon Ms Lankin:** I think I have a different numbering system than you. Hold on just a moment.

**Mr Poirier:** It is in what the new legislation does.

**Hon Ms Lankin:** Yes.

**Mr Poirier:** At the top of page 3, it says, "affirms everyone's right to be fully informed when making a health care decision." Would I read into that also the obligation of the physician or other health provider to disclose what the person's medical situation is, whether it is asked or not?

**Hon Ms Lankin:** My understanding—and again I will just offer at any point in time, if I am erring, feel free to jump in—my understanding and our intent is that in fact if a health care provider is prescribing treatment of some sort, that in order for an individual to be able to give fully informed and voluntary consent to that treatment, the full range of effects of the treatment, the reasons for the treatment and alternatives need to be disclosed. So I cannot imagine a situation in which that would be done without also disclosing the nature of the illness or prognosis that goes along with the informing of the nature and alternatives of treatment.

**Mr Poirier:** I still know for a fact from a medical background that sometimes physicians choose not to tell a particular patient what his or her medical condition may be, for whatever reason I have heard, namely the person may be too nervous, too depressed or whatever. I know this does happen.

Now consent, the right to be informed versus the duty to inform; what is the difference? Obviously, it is like the terms of the law; if you do not ask the question, you will not get the answer. Does that mean that you will get the answer even if you do not ask the question as to what could be wrong with you?

**Hon Ms Lankin:** If we look to the legislation itself, what we are talking about here is the protection that someone has to give consent for a treatment. So we have to look to what the elements are of providing consent.

**Mr Poirier:** That is right.

**Hon Ms Lankin:** Number one is informed consent, and this is the point that you raised. This is under section 5.2 of the proposed legislation. It reads, "The consent is informed if the person, before giving it, received all the information about the treatment, alternative courses of action and the material effects, risks and side-effects in each case that a reasonable person in the same circumstances would require in order to make a decision."

What I would suggest to you is that anyone who is in a situation where they are capable, mentally capable of providing consent with respect to their treatment, must therefore be informed and that there is a duty to inform.

If a physician feels there is a question about that capability, that kicks into another whole section and process in the act with respect to that. But even at that, if a person is found to be mentally incapable and has a rights adviser, their wishes can still be made known to the substitute decision-maker or the review board. I think that there is little way of getting around the duty to inform if there is treatment being prescribed and consent being sought.

**Mr Poirier:** Therefore the duty stands. If the patient is mentally competent, then the physician has the duty to tell that patient exactly what the medical condition is so that that patient can make an informed decision. If that patient is judged to be mentally incompetent, then that physician or other health provider would have a duty to inform the substitute. Right?

**Hon Ms Lankin:** Yes, if that person had already been judged to be mentally incapable and that was accepted and there was a substitute decision-maker.

**Mr Poirier:** So there is no way the health provider can get around that duty of telling the whole truth about what exactly is the nature of the medical problem with that person, correct?

**Hon Ms Lankin:** That is right.

**Mr Poirier:** Good. Thank you.

**Mr Winninger:** I wonder if you have looked at the potential conflict with the Criminal Code. We can provide all the protection we want in our statute and Mr Sterling has provided that in his bill. What about the potential for a criminal charge under the Criminal Code for failing to provide the necessities of life? Or I wonder if you have looked at the potential for civil suits from out of province or actions under the Family Law Reform Act for dependents' damages.

**Hon Ms Lankin:** This is an issue which will be raised with respect to both the bills before the committee and our

legislation. There is certainly provision that protects or looks at the issue of liability of health care providers. With respect to the Criminal Code and out-of-province actions, civil suits, I am going to ask my legal adviser here to step in and be of some assistance.

**Mr Winninger:** I know he is quite competent to give that.

**Mr Sharpe:** Thank you. We have indeed reviewed a number of dimensions you have raised and others. Of course, a great fear that has existed in the minds of many in crafting bills of this sort has been, "What about the criminal repercussions if one follows the wishes of an individual and turns off a respirator or issues a no-resuscitation order or something of that sort?" Might there be criminal repercussions if we see this as a benefit? One of the things the United States can do that we cannot is that their state statutes deal both with the criminal and civil immunities when doing this.

The only thing I could say that may be cold comfort to physicians is that I am not aware of a criminal prosecution being brought in the circumstances contemplated by either Mr Sterling's bills or the bills we have introduced. That is not to say it is not theoretically possible. And I understand there is a private member's bill that was introduced in Ottawa to add the same kinds of immunities that have been added in the provincial bills, both Mr Sterling's and the government's.

The question of out-of-province liability and responsibility, the reciprocal enforcement situations, the family law situations and so on, we have been working through this in the spirit of sharing of information and co-operation with other jurisdictions. We have also been looking at the possibility, as we have done with the Mental Health Act and the uniform Human Tissue Gift Act, the notion of the uniform law conference and law commissioners—because the best protection obviously would be if legislation of this sort could be introduced with proper immunity and cross-immunity references throughout the country.

As Mr Sterling indicated, these bills are in a sense precedents. I am aware that the legislation referred to other jurisdictions. These statutes, both Mr Sterling's and the government's, are quite a bit more comprehensive than those. It would be hoped that in time, perhaps not a long time, other jurisdictions would follow in our stead to provide the immunities necessary, to give full protections necessary to safeguard the rights of individuals.

I know, having spoken with my counterparts in other provinces, they are watching very anxiously and with great interest how these proceed through the process. If the Mental Health Act and other statutes, where in civil rights Ontario has tended to be a leader, are an example, I would hope that other jurisdictions will follow fairly quickly in our lead.

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**The Chair:** Mr Owens, one brief question.

**Mr Owens:** One of the issues, Minister, that I raised in the Legislature while debating Mr Sterling's private member's bill was around the issue of what happens in the emergency department. Everything that we have discussed

today seems to indicate that things will follow along in an orderly process, that a patient will be perhaps diagnosed and go through a period leading up to his or her death. But what happens in the ER where a patient is brought in and perhaps has a living will that is duly signed and authorized? How are we going to ensure that those wishes are going to be respected, especially in a city the size of Toronto? It may work in a smaller jurisdiction, but I can guarantee you that at Toronto General Hospital there will just be no way that they can follow up those kind of wishes. Are we going to be looking at building any kinds of protections in so that all sides are protected and that wishes are carried out in these emergency circumstances?

**Hon Ms Lankin:** Certainly in the truest sense of the emergency that you describe, where there is nobody available who has any knowledge of what the wishes of that patient would be, the health care provider is not in a situation then to have knowledge and to be under any obligation to live up to those wishes. But if that knowledge is there, through any medical charts or through someone who may carry a card with him that indicates he does not want any blood transfusions, those sorts of things will give instruction. In that case, the health care providers would be bound by those instructions. But I think you raise an interesting point and an important one with respect to the education that we do, and if a person feels this is an important issue, how he communicates that, by information he carries with him. Do you want to add to that, Mr Sharpe?

**Mr Sharpe:** No. I was just going to say that we have provided, under the protection from liability section in the consent act, under a heading of emergency treatment provision, that says the health practitioner who administers treatment or refrains from doing so in accordance with the provisions of this act, the wishes of the person and so on, is not liable for administering the treatment without consent or failing to administer the treatment in accordance with the wishes of the person. So there are immunity provisions there.

But I guess the practical thing in the Toronto General Hospital emergency in the middle of the night will be how will the treating emergency care physicians be sure, when the person is wheeled in, say, with a significant head injury, how will they know for certain that this person has a terminal condition. Surely they will have to take some means to stabilize the person and then assess the brain-wave activity or whatever is done in the emergency before determining whether the wishes of the person, even if they are known at that point, not to use heroic means to sustain life, would come into play.

**Mr Owens:** Right. You may get down to a situation where you are splitting hairs, where a terminally ill patient is run over by a bus and so what do you do. Do you carry out the wishes of the living will as a result of the terminal illness or do you move forward and treat the injuries resulting from the accident?

**Hon Ms Lankin:** I think what you describe would be the most extraordinary of cases. In many cases, as Mr Sharpe indicated, a period of time of assessment, of stabilization, takes place and during that period of time there is often contact of family members or others who would



have knowledge of what the wishes of this individual would be if that person had expressed those wishes and had strong feelings. I think that is one of the reasons that the government's initiatives reflect that flexibility. The alternative ways to have those advanced directives expressed, not just in a terminally ill situation and not just in a legally prescribed, legal will situation, are important.

**Mr Harnick:** The conundrum that the health care practitioner is under, and I refer to the question of Mr Winninger earlier, is that under the Criminal Code he may still be liable for a criminal prosecution. I appreciate that he has an immunity in terms of carrying out the wishes or not carrying out the wishes, but as long as that threat of criminal responsibility remains, do you not feel that most health care practitioners are going to have to rely on the immunity section in the act, because it is going to be very difficult for them to make that decision if they know that they could face criminal responsibility? Do you not have to try and make amends with the federal government before this has any meaning whatsoever?

**Hon Ms Lankin:** I will start off and then turn to Mr Sharpe. I would say that in some ways we face that issue currently under the common law. Doctors already have an obligation under common law to inform and when informed to I guess obtain proper consent. There have been cases that have ruled that the general sort of consent form when you check into the hospital and say, "Yes, anything and everything," does not stand up in terms of tests in court. So there already is that obligation. There already is that problem.

I think what we do here by codifying is set out the responsibilities, is inform both patients and providers of what those responsibilities are on both sides, and in most cases you then have patients who are making both informed decisions and making those decisions clearly known, so it perhaps in some ways lessens the ambiguities and the risk to the health care provider. But there is that issue of immunity.

**Mr Harnick:** I do not have a problem with that. I do not have a problem with the consent issue. My problem is, if you get into the death situations, then your difficulty is, if you are going to turn off the machine if those are the wishes, you can be in violation of the criminal law by doing that. At the same time, you have consent to do it, but one really has nothing to do with the other. They are not related. The difficulty is, if that medical practitioner has to make that decision, he could very well be liable if he is going to be prosecuted.

Certainly I appreciate that the federal government makes the criminal laws. The provincial government enforces the criminal laws. Maybe this is a more proper question for the Attorney General, but from your point of view, is there anything that you can be doing to avoid the actual prosecution, because the actual decision to prosecute becomes a provincial matter?

**The Chair:** Perhaps, Mr Harnick, you can refer this question to the Attorney General, who has been waiting patiently.

**Mr Harnick:** I only asked that question because I know Mr Sharpe's reputation and I know that he has written about these things.

**Hon Ms Lankin:** Perhaps we could let Mr Sharpe give one quick answer on this and it could be furthered by the Attorney General when he comes forward.

**Mr Sharpe:** Very briefly, what happens today, there are decisions made as we speak, I am sure, in hospitals in this province to turn off life-support systems, to issue no-resuscitation orders on people. It is done by caring, sensitive health professionals in collaboration with family, and sometimes with patients themselves, if they are conscious. The risks, if there are any, of criminal prosecution are I guess considered secondary in circumstances with that much suffering going on, on behalf of both the patients and their families.

Again, I do not know of a prosecution in such circumstances that has proceeded. Certainly in the discussions I have had with surgeons and others, their concern for their patient really overrides what they do not perceive as a realistic threat of criminal prosecution. But if you are asking would it be best to have a clear immunity in the Criminal Code, I think that would be everyone's preference that that be set out.

1650

#### MINISTRY OF THE ATTORNEY GENERAL

**The Chair:** We now welcome Howard Hampton, the Attorney General. If you could introduce your colleague, Howard.

**Hon Mr Hampton:** To my left is Stephen Fram, who, I am told, has been here from the inception of the thought about this kind of legislation.

**Mr Sterling:** Too long, too long.

**Hon Mr Hampton:** I would like to thank the committee for the invitation to appear. My remarks are brief. I want first of all to say to Mr Sterling that the government appreciates all of the work that he has put into these bills. He has focused the debate on these issues—and that is not an easy debate—and he has made a real contribution.

In that sense, it is a pleasure to be here today to speak to you as we begin consideration of Bill 7, An Act to amend the Powers of Attorney Act, and Bill 8, An Act respecting Natural Death.

As I said, the issues that Mr Sterling has addressed bring into focus the issues that he has focused on, focused the minds of the people of Ontario on these issues. But they are also of concern to people in every nation that has the medical technology to keep people alive indefinitely after their own bodies have failed and/or their mental capacities have gone.

I support the principle underlying these bills, that people must have a choice. The bills confirm the existing law that an adult can choose to consent or to refuse consent to any procedure. The bills provide two means of achieving that objective. Bill 7 provides for adults, while capable, to choose someone to make medical decisions for them based on the instructions in their power of attorney, presumably when they are incapable of making their own decisions,

and Bill 8 provides for a document expressing an adult's refusal of treatment under certain circumstances.

As I said, I believe the central principle underlying these bills is the right of people to choose for themselves. It is the basis of the common law. Personal choice governing personal decisions must be the basis of any new law.

Yesterday the government introduced two major bills, the Substitute Decisions Act and the Consent to Treatment Act. These are designed as comprehensive legislation. The Consent to Treatment Act introduced by my colleague the Honourable Frances Lankin, Minister of Health, whom we just heard from, sets out in statute law the principles that govern consent to treatment and, for the first time, provides Ontario with a legally sound, universal and practical approach to ensuring freedom of choice about treatment.

The substitute decisions bill comprehensively states the right of people, while capable, to appoint an attorney for personal care with authority to make medical and all other care decisions. The government bill also puts attorneys for personal care in a framework that provides for principal decisions being made for all people who are mentally incapable and need decisions to be made.

There are major safeguards in both the government bills. The government bills, like bills 7 and 8, should be examined in a non-partisan manner. While my colleague the Honourable Frances Lankin and I have had the privilege of introducing these bills, the bills are the result of efforts that began under a Conservative government and were considerably advanced under the Liberal government. They address fundamental human concerns and fundamental human rights that matter to each member of the assembly.

There may be concerns by organizations and individuals who have made submissions in relation to bills 7 and 8 that their efforts will be wasted if the government bills supersede these bills that are before this committee. There may also be concerns that the government will not take notice of what is said in this committee, and that each organization will have to again present its views when the government bills are before a committee of the Legislature. That is not so. Both the Ministry of the Attorney General and the Ministry of Health will have staff at this committee paying attention to what is being said and its implications for the government legislation.

Some people may feel that the focus on Bills 7 and 8 will not be helpful since the government bills are more comprehensive. I think that the opposite is true. There are many aspects of the government bills that have been discussed for years. There are other aspects of the government bills that are important but that can be overlooked because they are only a small part of the comprehensive legislation. For example, the aspects of the government bills that are designed to meet the same needs as Bills 7 and 8 would not get the same detailed public attention because of the necessary complexity of the legislative provisions. The discussion of Bills 7 and 8 should be sharply focused and helpful to our consideration of the government bills.

Again, my officials and I will be paying close attention to the comments and concerns that will be expressed to the committee over the coming weeks. I note that the list of

groups and individuals that will be appearing before the committee represents an impressive cross-section of views and experiences, and I look forward to all their contributions.

I want to say once again that I would like to thank Mr Sterling for the service that he has done for the province in bringing these bills forward and providing a means for focusing attention on all of these important issues.

**Mr Sterling:** I thank the Attorney General very much for coming and for the kind comments. I am always a little apprehensive when the Attorney General, a member of the Legislature from another party, lavishes such praise at the beginning of his remarks. I always think that there is usually a kick that comes at the end of the remarks, but I have not received the kick yet and I hope I will not hear about that kick for a while anyway.

At any rate, I had the opportunity to just briefly look at an overview of your legislation. Members of the committee do not yet have a copy of your bill, which was introduced yesterday. It is just going through the printing process, etc. I sure they will be interested in it.

Many of the sections of the Substitute Decisions Act deal with other matters, deal with matters that are already contained in the Powers of Attorney Act, deal with property management, deal with the whole concept of the public trustee and the public guardian, etc.

Prior to your attendance at the committee, Attorney General, I was expressing some concern over the whole idea of making the issue more complex rather than keeping the issue as fairly simple and straightforward as you could. I just wondered. In terms of the approach of the Minister of Health, she was kind enough to point out what she saw as deficiencies in the bill. Would you be kind enough to perhaps promise, through Mr Fram, to put forward what you would see as the deficiencies in Bills 7 and 8 with regard to those bills as they stand and stand alone.

**Hon Mr Hampton:** You were asking for the kick, Mr Sterling. Here it comes. As you know, Mr Fram has been around for a long time. He has, one might say, ownership of many of these issues. He has delineated a number of concerns and a number of points with respect to your bills. I know he would be happy to review them and he could do so right now.

**Mr Sterling:** Before he does, I just want to point out that back in the old days Mr Fram did not have ownership of the bills, nor the issues. I can remember many times with Mr Fram, our having discussions, and from time to time, the politicians would win. At any rate, Mr Fram, I do not know if you want to delineate them at this point in time.

**Mr Fram:** While people say that I have ownership, of course, as Norm has said, "You have ownership of this legislation." The major problems with trying to be simple in the legislation is that it is the legislation that actually governs the way something is used. For a long time I have been very attracted to plain language drafting. As Norm has probably seen, even in trying to do a natural death act it gets very complex when you try to relate one thing to another. I have come to the conclusion that in this kind of legislation it is not the complexity of the legislation, which the public by and large will never see, but the simplicity of



the product of the legislation, that is, the form of power of attorney.

1700

What we conceive of in drafting these provisions is a simple public form that will be drafted and made available to people by the public guardian and trustees office, that it will be available with instructions for filling it out, guidance as you go through, along the lines of the American Bar Association draft powers of attorney form, which is an excellent document that was several years in the evolution. But it combines both the property aspect and the personal care medical decisions, advance directive provisions, if you want to fill those in, and leads you through so that you finally have a document that is complete.

I do not think that product would be any different with simpler provisions. I mean, in terms of your amendment to the Powers of Attorney Act that is pretty simple. You say you can make a power of attorney dealing with medical decisions and set out instructions in that to guide your attorney. But it is unclear. First of all, powers of attorney for property operate while the person is still capable. If you just created a power of attorney for personal care or for medical decisions, the assumption would be that two people would have control over the same natural life.

That is, your attorney would be able to make decisions for you while you were still capable if it operated like a property power of attorney because it does not start operating when you become incapable. It starts operating as soon as you make it. That is okay for property because you can tell your attorney exactly what happens, but in the area of personal care or decisions it is a very problematic area.

**Mr Sterling:** I do not want to debate with you too deeply on that point but I have a problem with the concept you put forward. If I had the power of attorney and said Joe Blow should have the right and it comes to making a medical decision or a decision as to treatment and I did not agree with him, then I would say to give me the power of attorney, rip, done and then that is the end of it.

**Mr Fram:** But if you were weak but still competent and you could not go rip, if you were paralysed; there are a lot of conditions where you are weak and nobody is going to probe. The fact is that there are dilemmas that need safeguarding and the government bill has those in the form of advocacy and in the form of an ability to apply to a review board.

The next related issue is the triggering event: incapacity. We will assume and I assume you intend that a power of attorney will only operate when the person who made it is no longer capable. There is no definition in law that it plugs into and there are no provisions for how we find out or determine that incapacity. The government bills have spent a long time and there has been a lot of discussion among community groups addressing the question of how we determine incapacity and what we should mean by it. There is a whole lot of debate that has gone on about those things.

Again, as raised, there is no ability in your bill for the adult who has made the power of attorney to contest that he is still capable. This particularly arises in the case where

he has had a stroke and still has capacity, but when you are lying in a bed with the doctors and so forth; if you do not have tests and if you do not have an ability to appeal, anybody lying down tends to be looked at as powerless and tends to look to people standing up to make his decisions for him. You have to be very careful at where power takes over, at where the power of attorney actually works.

The central dilemma, however, with your power of attorney is that there is nothing in the Powers of Attorney Act that makes a physician accept it. It is the fundamental law of agency that a person can look behind the agent to the principle. There is nothing in the bill that requires physicians to accept the power of attorney and the authority of the attorney, and then they will not do it unless they want to do it.

It is a quixotic matter of whether they are going to recognize powers of attorney or not. With the dovetailing of the consent legislation they say, "If somebody is incapable, first you accept a guardian, second you accept a validated power of attorney, third you accept an unvalidated power of attorney," and so forth. Then you go to the family members, spouses and partners, and that is the triggering event that says, "Physicians, here is how you consent."

The notion of powers of attorney has to be married with an obligation of a physician to actually accept certain substitutes once the person is incapable, and that is in the consent to treatment legislation.

While you have provisions in your natural death legislation, there is nothing that would protect people, acting in good faith in a non-financial area, accepting that power of attorney. There is a question of what happens. Where there are no expressed statements set out in the power of attorney, what is it that the attorney does when he comes to those things? It does not say that wishes are the basis of decision-making, so we have that as a central problem.

Both pieces of government legislation are based on the notion that no matter how somebody gets to be a substitute—whether it is because we choose him: as an attorney, or he is chosen by the court in a guardianship proceeding or whether it is because a situation has arisen in a medical context or a health context and a decision must be made right away—the wishes of the patient govern.

The central theme is that no matter how those wishes have come about—whether those wishes are set out in a power of attorney, or those wishes are set out in another document like a Natural Death Act or whether those wishes are set out elsewhere—those wishes must be followed. If somebody has changed his mind and the person who makes the decision knows that, he must go on the most recent specific wishes.

The central theme goes all the way through the government legislation. I will stop there.

1710

**Mr Sterling:** I asked to be kicked, but not in—

**Mr Fram:** Sorry, Norm.

**Mr Sterling:** I will see you outside.

**The Chair:** Any further questions from the government caucus? None? Mr Harnick.

**Mr Harnick:** My question is of the Attorney General. One of the difficulties I have with the way this process is

now unfolding is the fact that as of right now, I do not have your bill in front of me. I know the Canadian Bar Association is going to be commenting on these pieces of legislation, Bills 7 and 8, but I do not believe it has your bill in front of it.

One of my concerns, and I say this with great respect, is that I hope we will have the opportunity for witnesses such as the Canadian Bar Association and the other people who are coming to comment on Bills 7 and 8 to comment on the legislation that you and your colleague the Minister of Health have now tabled before the Legislature. I hope we are not going to go through this exercise dealing with Bills 7 and 8 and not have these people have the opportunity to comment specifically on your own legislation. I can appreciate that you believe it is good legislation, but it may be able to be made better, and my only concern is that we do not have it in front of us now, when we have all these people coming to see us. Surely we want them to comment on the new legislation as well. Will they have that opportunity?

**Hon Mr Hampton:** It is my information that the clerk now has copies of both government bills and they can be made available to any group or organization. I know Mr Sterling has a copy of the government bill, plus the explanatory notes I believe, so if he wishes particular comment on particular sections, he is able to distribute that. The government's position is that we will do everything to ensure that that can happen, and for any organization that wants a copy, it can get it from the clerk or it can get it from us.

**The Chair:** Mr Harnick, your comment did presage the presentation from the Canadian Bar Association, a group which I am sure you would not want to keep waiting for too much longer.

**Mr Harnick:** I appreciate that, but I think they would have some concerns about knowing that they might want an opportunity eventually to talk about this, and we are doing this in a non-partisan manner.

My only concern, and I put it again to the Attorney General, is that these groups all have an opportunity to comment on the legislation that he has brought forward. Unfortunately, we are going to go through this exercise because we now have had second reading on Bills 7 and 8, we are now having committee hearings, we are now hearing the witnesses. I do not want people to think that if we have to come back and do this again when your bills get to second reading—that we are not being accused of obstructing or delaying.

It is important legislation and it should be non-partisan. My concern is sincere and I think all these experts should have the opportunity to come back and comment on your bill. Unfortunately, we are duplicating efforts here, but I just want to make sure we have a commitment from you that these people will have that opportunity.

**Hon Mr Hampton:** I think what has to be acknowledged is that the issues that are open for debate and that Mr Sterling's bills and the government's bills necessarily call into question are quite complex. There are many of them and there will be ample opportunity to look at the government bills, probably here now and at some later time when they come back to committee. Heavens, I do

not think the opposition would be accused of engaging in obstructionism for asking for that. We all know that there are plenty of other opportunities to accuse you of obstruction.

**The Chair:** That was very helpful testimony, Attorney General. Thank you.

**Mr Sterling:** You may say that.

**The Chair:** Well, I want to move along.

#### CANADIAN BAR ASSOCIATION—ONTARIO

**The Chair:** We have now a presentation from the Canadian Bar Association—Ontario, Mr Corbin and Mrs Hoffstein. As you have seen, as you have been patiently waiting this afternoon, basically your presentation will take as much time as you need to and then the time remaining would be divided among the various caucuses for questions.

**Mrs Hoffstein:** Thank you. It has been a very interesting discussion until now.

**Mr Corbin:** Thank you for the opportunity to present some comments on Bills 7 and 8 this afternoon. I also want to thank in particular Mr Harnick for his kind thoughts and views on the Canadian Bar Association—Ontario having an opportunity to express its comments on Bills 108, 109 and 110, which were introduced yesterday. We certainly hope to take advantage of that opportunity and trust that the respective ministries will give us, and other groups of course, the opportunity to make those presentations with some time for deliberation, just judging by the size of the legislation that was introduced.

The executive of the Canadian Bar Association—Ontario trusts and estates section specifically is who has authorized us to make a submission on Bills 7 and 8. I believe you may already have in front of you a copy of the submission. We chose to put it in writing and submit it according to the deadline in the hope, possibly, that you might have the opportunity to review it before these hearings. If not, we will perhaps go through some of the highlights of the submission indicating where our concerns are with the private member's bills, and probably still try to keep things fairly short in our presentation and let you ask questions as much as you like.

You will see from the executive summary at the front of the submission that we have expressed some reservations, among other things, about the timing of the process in Bills 7 and 8. You have heard a number of other people this afternoon make those same comments. Obviously in light of the events of the last 24 hours, we can only reiterate our concerns that whatever treatment is given to Bills 7 and 8 it would in our view be imprudent to push ahead with them without having a full consideration of how they interrelate to the government legislation.

Since the government bills were just introduced, subject to the brief comments that have been made this afternoon, we are not in a position to offer any comments on that legislation. But I guess we can say in general terms, as will be evident from the comments we make about Bills 7 and 8, that the government bills certainly seem to address some of the concerns that we have with the private member's



bills and to that extent we welcome the opportunity to review them and comment.

The reason that we are here and the reason that the trusts and estates section felt that they had to come forward is that as estates practitioners we are being asked all the time by our clients, in addition to drafting the will and the power of attorney, "By the way, we'd like to have a living will." Since we all know that at this moment a living will has no legislative base, it is certainly, from a professional point of view, quite unsatisfying to have to draft a document that, as we do it, we know will not be something that the client can ensure will be carried out in conjunction with the family or the physicians. To that extent, the initiative that is represented by Mr Sterling's private member's bills is certainly welcome because we are trying in some way to fill that vacuum so that at least we can say to the clients when they finish the document with us, yes, and here is what it means for you.

1720

The concern we have about Bills 7 and 8 and in particular Bill 8 dealing with the living will is that it is really going to enshrine a document which represents not the furthest advances. As you have heard this afternoon, the notion of the medical directive or advanced health care directive represents a significant leap beyond the living will. The living will has been criticized first because it is simply a rejectionist document, "I do not want certain treatment," second because it deals only with a terminal condition, and third because it is couched in very vague and unhelpful language for the family and physicians, talking about no heroic measures being taken. Surely, with the speed of medical technology advances that have been evident of late, what is today's heroic measure may be tomorrow's standard procedure. For that reason, we are very pleased to see the kind of initiative that appears to be reflected in the government legislation to go beyond the living will, encompassing what Mr Sterling's bills would contemplate but looking at the broader issue of allowing people to cover a much broader spectrum of conditions and kinds of treatment they would be prepared to accept or not to accept.

One of our concerns in looking at the legislation—unfortunately, we did not have the benefit of speaking to Mr Sterling in advance—is that it was not clear to us the extent, if any, to which the experience in the United States has been looked to. Mr Sterling mentioned that more than 40 states have legislation dealing with living wills, and in light of a number of the concerns we have identified in these bills, our sense was that perhaps inadequate examination, homework, may have been done in looking at what is going on south of the border, trying to learn from their successes and failures both in terms of the statutes that are being enacted and what form judicial response to those statutes has taken.

A couple of people have already spoken about the problem of criminal prosecution. Our submission, as you will see if you take a leisurely moment to read it later, echoes that concern. It is already apparent that there is a very serious lack of communication between physicians and their patients about living wills. Whether it is a question of discomfort on the part of one or the other or both of

them, is difficult to say. I know there are studies being done by physicians here in Canada as well as in the United States trying to identify what is impeding the use of living wills. But it seems to us that if you impose sanctions or the threat of sanctions of fine and imprisonment on a physician, the likelihood of his wanting to deal with the issue of a living will—even mention it to the patient—is reduced out of fear that the patient might say, "Sure, that is what I want," and yet down the road possibly the threat being there that that living will might be used against them if they felt that they, for whatever reason, could not comply with it.

Again, we do not have the benefit of seeing the legislation that the government has brought in, but we did not hear mention of any sanctions of the kind that are in Mr Sterling's bills. Assuming that is the case, I think we would welcome that. The most serious reservation I think we have in principle about the two bills is that they impose sanctions that may turn out to be counterproductive in the sense of impeding the use of living wills rather than encouraging them.

I believe as well that others may have touched on the issue about Bills 7 and 8 together. They are being put forward together and I am not sure whether enough consideration was given to how they relate to one another.

First, if you consider the scenario in which an individual does not have a living will and has done a power of attorney that authorizes the consent or withholding of consent to medical treatment, if the proxy, the decision-maker, says, "Yes, pull the plug," and the physician relies on that, there is nothing in Bill 8 or in Bill 7 which would give any kind of protection to the physician, because he is not carrying out the terms of a living will, he is carrying out the terms of another person who has given that direction.

Similarly, under Bill 7, if you have a substitute decision-maker who says, "Yes, apply the life-sustaining procedure," and the patient in question has a living will that says, "Don't do it," then where does that put the physician? Which one is going to take precedence? I believe I heard one of the speakers before talk about a priority in which those kinds of issues would be addressed.

The concern that I had when I looked at the legislation, Bill 8, and I think it could be fixed fairly easily—I should say at the outset, obviously we cannot comment on the other bills. Bills 7 and 8 are the only ones that are here, and although Mr Sterling has not invited us to criticize the bill, that is what we felt was our responsibility today.

The living will as it is drafted is replete with definitions, and although Mr Sterling suggested that the intent of his private member's bill was to keep it simple, which lawyers are always accused of failing to do, if you look at the way the definition of living will is couched, it has in it the references to terminal condition, mental incompetence or competence and life-sustaining procedure, and if you mix that all together, you may have a situation in which a person cannot draft a plain-language living will, because arguably, if he or she does not make reference to the specific description of mental competence or incompetence set out in the legislation or does not properly describe the terminal condition, one could say that that is not a living will, it does not fit the definition. It was not clear, although it is now,

whether there was some intent that there be a statutory form of living will. Perhaps there ought to be.

I think our view would lean to the other approach, to try not to introduce requirements that would result in the frustration of an individual's living will that is expressed in very simple language and yet a lawyer poring over it would say: "Aha, there's something missing here. This isn't a living will." You should not rely on that in order to carry out those terms, those wishes.

So our view would be, simplify things, at least, by removing the application of those various definitions of terminal condition, life-sustaining procedure and so on, take them out of the definition of a living will. The living will would simply be an expression, and those definitions would be restricted to the application, the issue about what the physician should do, that he would only rely on a plain-language living will if it related to life-sustaining procedures if it was a case of a terminal condition and he was satisfied about the person's state of competence at the time he or she did it.

I will try not to repeat everything that was said before, and I will also try not to go point by point through this material but pick out some of the points that I would like to stress.

With respect to the definitions, I suspect that you are going to hear a lot from physicians on this point, about what is and is not a life-sustaining procedure. We certainly do not have that expertise, but we understand that that is a debate that has gone on in the United States and one can only assume that it would go on here as to, for example, whether artificial nutrition or hydration constitutes a life-sustaining procedure.

Again, the question of what is a terminal condition and whether or not death is imminent is not something for us to comment on, but simply to suggest that there may have to be some significant input from physicians beyond what may have already taken place in order to deal with some of those issues in advance and not spawn litigation later on.

1730

One point struck us, that given the fact that this is a basically rejectionist document, we note that the definition for mental competence requires the person to understand the consequences of giving consent to the treatment, and in view of the fact that it is a document that says, "Don't give me this," it was not clear why they would have to have that understanding.

The definition of "physician" ought to be clarified, as to under what laws they are legally qualified. I am sure there are a lot of people who believe they are legally qualified physicians yet may not fit the definition according to Ontario law.

On the question about who may execute a living will, the private members' bills say the age of 18 seems to be an appropriate age. It may be, although the Public Hospitals Act talks about consent to medical treatment and it uses the age of 16. I am not sure whether there would not be some merit in having some harmonization in the various statutes about the age at which consent can be given.

There are some details about witnessing requirements that I do not think I will go into. Suffice to say that having

much more familiarity with the Succession Law Reform Act and the execution of wills, we thought some of that language might be useful to import into this and get rid of some of the specific problems we have there. One of them, to mention only one, is the notion that why should a person not be allowed to execute a living will through the use of another person, to in his presence and by his direction sign a living will? Given the ease with which a living will can be revoked, it strikes us that there ought to be a bit more flexibility in executing a living will.

The question of whether a witness is related: We are not really looking at the merits of that being good or bad—I think it was alluded to before—but what does it mean to be related? You have relatedness under the Income Tax Act and probably a whole lot of other statutes. It would be helpful to say exactly what is meant by that.

We have a lot of problems with the issue about a person being disqualified if they are a potential beneficiary. What does it mean to be a potential beneficiary? In theory, I could be a potential beneficiary of Mr Sterling's will.

**Mr Sterling:** After this presentation, fat chance.

**Mr Corbin:** I suggest that word "potential" has a lot of problems associated with it, but beyond that, what about the notion of being an actual beneficiary? How do you know? A person does not have to disclose to you that he has named you in their will, and he may well tell you that and have done something quite different, as I am sure those of you who have studied a few cases in the law will have seen.

The reference to an estate is a little troublesome, because you could imagine somebody coming forward and saying, "Yes, I was a joint tenant with the person who made their living will, and when he dies I will get it by right of survivorship," but when one talks about an estate, one normally talks about joint tenancies flowing outside of the estate. Likewise, being the named beneficiary under a policy of insurance: Outside the estate, does that mean you are or are not a potential beneficiary? What is the impact of being, unknown to you, an actual beneficiary, for that matter? What does that do to the effect of your having been a witness?

What about being financially responsible? We think that term is a bit vague, and suggest that perhaps the definition of "dependant" under the Succession Law Reform Act might be a good place to look.

Another problem: When are these tests of being related, being a potential beneficiary—assuming you can figure that out—and being financially responsible for someone to be applied? The legislation does not say it is at the time the living will was signed, and you might ask whether subsequently becoming financially responsible somehow invalidates that living will.

Another general concern that struck us about witnesses was that some care is taken in Bill 8 to ensure that certain people are not witnesses, and I believe the legislation that was introduced by the government has safeguards as well, perhaps a different set; but given the fact that Bill 7 allows a person to make a power of attorney that authorizes another individual to order the withdrawal of life-sustaining



procedures, then it seems to us that the same kind of safeguards, whatever they be in the context of executing a living will, have to go into the Powers of Attorney Act. And that again raises an issue: If there should be safeguards like that, then how can you do what Mr Sterling has tried commendably to do with Bill 7 and make a very simple amendment to the Powers of Attorney Act which covers decisions about property as well as decisions about personal care?

We have a few concerns about revocation of a living will, the suggestion being that oral revocation is sufficient and you do not even have to be mentally competent to do that. I suggest that would put the physician perhaps in a difficult position if the patient is in a state of dementia and has purported to give some indication that he or she is revoking the living will and the physician is quite confident that it is not the person's true will speaking. On that same point, too, there is obviously room for abuse when a physician is unhappy about being confronted with a living will. If the rule is that a revocation can take place orally without any witnesses being present, I suppose if I were unhappy, if I were the treating physician I would simply say, "Oh well, just before he lapsed into a coma he said he revoked his living will," and therefore I am off the hook.

On the question of being off the hook, there is also a problem as we see it, that it is rather remarkable that in Bill 8, a statute that proposes sanctions to be imposed, there does not appear to be any defence, so that if you reasonably believe the person was not competent when they executed that living will, you have no choice. You either comply with the living will, transfer the individual—assuming you could find someone to transfer that person to and assuming you are not in violation of some regulations that govern people who are treating individuals in a hospital setting. Where does that put you?

The question about how the living will takes effect: I do not know if there is an easy answer to that. That is that if I sign a living will today and put it away in a drawer and then something happens to me and I may have had a change of heart but I never made any indication that I wanted delivered, there is nothing in Bill 8 that says it will not be effective if some member of my family finds it in the drawer, takes it out and hands it to the physician giving care. I do not know whether that is good or bad, but the fact is it is not addressed. The question about people consulting more than one physician and one being aware of the living will and another not being aware, I am not quite sure how you deal with it as a practical matter.

I will just make a couple of more comments about the attempt to protect physicians from liability and then stop and leave it open to you for questions. In subsection 6(1) of Bill 8 it is a little too broadly worded. It says "any person who carries out a living will," and I think it should probably be restricted so that any person who is either the physician responsible for treatment or is carrying out the direction of the physician responsible for treatment, but nobody else, would have that protection for pulling the plug.

I think a comment was also made earlier by Mr Winner: What about a civil suit from outside the jurisdiction? I do not quite know how you deal with that. I

guess you would have to look at the laws of the other jurisdiction and get into tough conflict of laws questions. There is no protection here for a suit by a member of the family under the Family Law Act, and I think if you are going to go with the kind of exoneration contained in Bill 8, you should not restrict it to the person who made the living will but individuals who would have a right to bring an action for dependants' claim for damages.

A couple of small points as well: whether the legislation would be retroactive to cover documents that through some foresight were signed before the legislation comes into play. It would be nice to see a statement in there to that effect if that is what is intended. And I do not know, by the way, whether that is covered in the legislation the government has in mind as well.

Last, should there be some recognition of living wills which come in from outside the jurisdiction that are valid according to Nova Scotia law or Quebec law? There is nothing in so many words here which would validate those documents. I should think that with the mobility of individuals that would be worth doing.

I am going to stop at that point. My voice is gone.

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**Mr Sterling:** I would like to thank you—I think—for coming to the committee and having considered my bills. As you may or may not be aware, I first introduced both of these bills a year and a half ago. I think it was in 1989 when I first started down the road and looked at a number of the American jurisdictions in terms of the kinds of legislation which they had. The legislation I referred to tended to be fairly simplistic in its approach. My attempts were to try to keep the legislation somewhat simplistic in its approach as well. Whether I have achieved that in its final analysis will be determined somewhere down the line, I guess.

The bills which the Attorney General and the Minister of Health have put forward, particularly the Attorney General's bill, which is more relevant to Bills 7 and 8, include a whole host of provisions. I guess you can argue two ways on dealing with matters like this: whether or not they should be carved out and put in a separate piece of legislation over here and carve out other matters and put them over here. I tend to sort of like to do that even if you have to be repetitive to some degree in legislation. I know legislative counsel do not like to be repetitive in legislation. They resist that in as many situations as they can.

My concern is that you do not narrow the legislation so much with dealing with the official guardian or the public trustee that a person who is trying to understand the law in relation can read an act which is contained in a document which you can present to him if he wants to understand that. Also sometimes the legal profession in fact needs separate documents to understand what is happening.

I do not know whether you can comment on that approach without having the legislation. If you cannot, if you do not feel you could comment on the approach of the legislation now, perhaps you might want to wait a week and make a written submission to us on that.

**Mrs Hoffstein:** We clearly cannot comment on legislation we have not reviewed in detail, but I do welcome the

opportunity. I just want to say that part of the problem we have had is that although we appreciate the fact that the legislation you have proposed is simple and straightforward, it in fact almost has put us as lawyers into a strait-jacket in terms of what it is that constitutes a living will. Again going back to the definition, I think if the initiative in the other legislation is to broaden the scope of what constitutes a document that will be affirmed as a living will and will be given effect to, then I would welcome that opportunity because I think it gives more flexibility to the person to make a statement that would then qualify as a valid living will. Again, it is very hard for us to comment as to whether the new proposed legislation has that effect. That was one of our major concerns with Bill 8. It had mainly to do with the definition sections. That is where it was coming out. It seemed to create a statutory form of living will that you could not deviate from because otherwise you would not have something called a living will.

**Mr Sterling:** I guess my intent in drafting it was to try to be definitive to some point—

**Mrs Hoffstein:** But you can see the problem it creates.

**Mr Sterling:** —so the public would have some direction as to how to draw a living will, but it certainly was not my intention in dealing with it to try to restrict in any way a valid directive by a person trying to deal with the same problem.

**The Chair:** Certainly because of the concurrence of these several bills and the fact that these hearings will be going on for another couple of weeks, any submissions you might have in regard to those other bills would be very gratefully received.

**Mr Harnick:** I will be very brief. In the normal course, I gather you will be doing some sort of written submission on the new legislation. Is that generally the way you would go about it?

**Mrs Hoffstein:** We would like to have that opportunity. We would also appreciate a sense of your timing here and when you would be able to see us again so that we understand what our timing is.

**Mr Harnick:** I tried to get that from the Attorney General, who did not want to tell me.

**Mr Hoffstein:** Are you able as a committee—this is a question I have for you—to consider comments about draft legislation that is not yet at second reading stage?

**Mr Harnick:** Certainly, and if that could be provided to us, I suppose as soon as possible, because I have no idea when this is coming back for second reading. I suspect it may be before the end of June. Whether it gets referred back to a committee is another question.

**Mr Corbin:** It probably would not be, as you say, in the normal course on that kind of timetable, but we would do whatever we could to put something together in the time available.

**Mr Winninger:** Your brief raises a number of interesting and vexing issues, including whether a physician should look behind a living will if he is at all suspicious as to its validity. One issue you did not raise but one that was raised by a University of Windsor law professor was the

issue of subsection 3(3) and whether pregnant women should be excluded from the ambit of the living will, the potential for violation of the Charter of Rights and so on. I wonder if this would be an appropriate time to comment on that.

**The Chair:** I believe, Mr Winninger, we are going to have a number of witnesses who will be speaking to that specific issue, but please go ahead.

**Mr Winninger:** They are only here once right now.

**Mr Corbin:** I think we raised the issue somewhere in our submission, without trying to take any particular position on it, because obviously it is a sensitive one. That is on page 23. It is an issue that may not be all that obvious about whether the physician has an obligation to inquire or somehow determine that the individual is or is not pregnant before he acts on that living will, and the question about whether it offends the Charter of Rights. I would not even want to suggest any answer to that kind of question. I think it is a difficult one.

**Mr Mills:** I am glad Norm has come back, because I would just like to say, I do not know if the government side has said anything yet—us ordinary folks, not the ministers—about the wonderful effort he put into that. I am sure it is appreciated in a very real way, because it addresses all kinds of problems.

I would just like to say that every time we come to this committee, one is almost having to bring another case with him, because we get so much paper I cannot carry it away any more.

A couple of quick queries. I do not know, Norm, if you thought about this, but I was wondering if I signed a living will or made one and then say, for instance, I went to England. Do you see that as being good there, or would they say, “Well, that was made in Canada and we cannot act by that”? How would that be fixed?

**Mr Harnick:** Good question.

**Mr Sterling:** I think the laws we make here are only applicable here in terms of dealing with these kinds of matters.

**Mr Mills:** Another point is about survivors' pensions. I just wondered, when you have, say, one spouse who lives and gains a 75% pension through the decease of the other spouse, and that happens deliberately, what happens if the reaction of the carrier of that type of pension is to say, “Well, that person did not die.” That is a concern I had. I saw in your brief that you mentioned some of those things, and I thank you for that brief. It is very interesting. Thank you, Norman.

**The Chair:** Thank you very much, Mr Corbin and Mrs Hoffstein.

#### COMMITTEE BUDGET

**The Chair:** The clerk is now circulating a copy of the budget, which would include some summer sittings, in order for it to be presented to the Board of Internal Economy prior to those sittings occurring.

Before we look at that, I should make brief mention of a couple of items. Our researcher has prepared a summary of the recommendations which have been mailed to us in



regard to Bills 7 and 8, and they will be forwarded to our offices. We have been, I understand, given permission to meet on the evenings of 3 and 4 June, so we will be here between 7 and approximately 9:30 on those evenings, in addition to regular afternoon sittings.

You have before you the budget for the committee, if the clerk could give us a brief overview.

**Clerk of the Committee:** This budget has been before the committee before, and the question that was put to the committee was, "How much time shall we put in for sittings during this coming recess and the winter recess?" There did not seem to be any answers coming back from any of the caucuses, because nobody has any idea what will be referred to the committee.

The last meeting of the Board of Internal Economy before the summer is next Monday, so I took a stab at it and threw in eight weeks of sitting time for this coming recess and the next recess, split between hearings at Queen's Park and hearings on the road, and therefore the budget came out to about \$384,000, which is fairly high. This can be changed. I am open to suggestions from any committee members or any direction at all.

**Mr Morrow:** When will this budget go before the Board of Internal Economy?

**Clerk of the Committee:** If this budget passes today, we would hope to get it before the board at its next meeting, which is 3 June, I believe.

**Mr Poirier:** I just wanted to note, Lisa, under the travel per diem hearings in Ontario, the last line should read "eight days times one Chair times \$90" rather than "11 members."

**Clerk of the Committee:** I think the multiplication is still correct. I will change the "11 members" to "one Chair."

**Mr Poirier:** When is the board meeting?

**Clerk of the Committee:** The next meeting of the board is this coming Monday, 3 June. That is supposed to be the last meeting before the recess.

**Mr Harnick:** I was going to say that we should have a subcommittee meeting to discuss this, and then get back to you and approve it at the beginning of the next meeting.

**Clerk of the Committee:** Anything is fine. Just as a point of information, I do not think that a lot of other committees have passed budgets, so if we all miss the 3 June meeting, we will be in the situation of having to get the board to walk around the budgets to approve them before the recess.

**The Chair:** So we would have to meet between now and 3 June as a subcommittee.

**Mr Harnick:** Yes. Do you expect Mr Sorbara back?

**Mr Poirier:** I am not so sure what his schedule is on the budget hearings, but if not, let us know. I have not had a good laugh in a long time. I will go on the subcommittee.

**Mr Morrow:** Can we empower you hopefully to find out what our agenda is going to be like this summer? Is that possible?

**The Chair:** I will be having dinner with the House leader. I could ask.

Is it the intent of the committee that we refer this matter to the subcommittee and from there to the Board of Internal Economy?

**Mr Mills:** Yes, that is my idea.

**The Chair:** I will accept that as the intent and we will strike a subcommittee meeting between now and 3 June. We are adjourned until Monday.

The committee adjourned at 1755.

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## STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

**Chair:** White, Drummond (Durham Centre NDP)  
**Vice-Chair:** Morrow, Mark (Wentworth East NDP)  
 Carr, Gary (Oakville South PC)  
 Chiarelli, Robert (Ottawa West L)  
 Fletcher, Derek (Guelph NDP)  
 Harnick, Charles (Willowdale PC)  
 Mathysen, Irene (Middlesex NDP)  
 Mills, Gordon (Durham East NDP)  
 Poirier, Jean (Prescott and Russell L)  
 Sorbara, Gregory S. (York Centre L)  
 Wilson, Fred (Frontenac-Addington NDP)  
 Winninger, David (London South NDP)

**Substitution:** Owens, Stephen (Scarborough Centre NDP) for Mr F. Wilson

**Also taking part:** Sterling, Norman W. (Carleton PC)

**Clerk:** Freedman, Lisa

**Staff:** Swift, Susan, Research Officer, Legislative Research Service

















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